

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

DANIEL SMALL, et al.,,

*Plaintiff,*

v.

UNIVERSITY MEDICAL CENTER OF  
SOUTHERN NEVADA

,

*Defendants.*

NO. 2:13-cv-00298-APG-PAL

**SPECIAL MASTER DANIEL B.  
GARRIE E-DISCOVERY SUMMARY  
AND ORDER**

**BACKGROUND AND PRIOR PROCEEDINGS**

The Special Master was appointed on March 3, 2014. (Dkt. No. 149.) On March 10, 2014, the parties, counsel for all parties, and ESI consultants for all parties, met with Special Master Daniel Garrie and United States Magistrate Judge Peggy Leen in chambers. (Dkt. No. 151.) On March 18, 2014, Special Master Garrie memorialized his directives to the parties in a written order. (Dkt. No. 154.)

On March 18, 2014 Order Special Master Garrie set a hearing schedule, with hearings on April 4, 2014 and April 7, 2014. Present on behalf of Plaintiffs were Counsel Jon Tostrud, Marc Godino, and David O'Mara and ESI consultants Douglas Forrest and Bruce Pixley. Present on behalf of Defendant were Counsel Margaret Foley and Cayla Witty, ESI vendor Joe Edmondson, and Dean Schaibley, Network Security Administrator from the UMC IT Department. In addition, the following UMC IT individuals attended the April 7, 2014 hearing: Jason Clark, Sr. Systems Administrator, Marilyn Susan Kisner, IT Customer Support Manager, and Shane Lattin, Network Engineer. *See* Exhibit A (April 4, 2014 rough hearing transcript); Exhibit B (April 7, 2014, hearing transcript.)

At the April 7, 2014 hearing, Special Master Garrie ordered an additional telephone hearing on April 10, 2014. *See* Exhibit B at 234:01-236:21 Present at the April 10, 2014 telephonic hearing were Counsel and their respective ESI Consultants and ESI vendor, and no individuals from UMC's IT Department. *See* Exhibit C (April 10, 2014, rough hearing transcript)

1 The Special Master conducted full day hearings on April 4, 2014 and April 7, 2014 with  
2 counsel, the parties' representatives, and consultants regarding UMC's ESI collection and  
3 production issues, as well as UMC's efforts to preserve discoverable materials pursuant to the  
4 Plaintiffs' litigation hold/preservation letters, and UMC's search of the ESI collected.

5 These hearings identified multiple potential failures by UMC with respect to the  
6 collection, preservation, and search of the ESI by UMC.

### 7 **ISSUES WITH UMC COLLECTION EFFORTS**

#### 8 **A. UMC ESI Collection was Incomplete as of April 10, 2014.**

9 Among other things.

- 10 1. UMC did not collect the laptops of Doug Spring, Director of Personnel Operations,  
11 and John Mumford, Sr. Human Resources Analyst, both potential sources of relevant  
12 ESI. *See* Exhibit D, UMC Custodian Interviews (Both John Mumford and Doug  
13 Spring stated that they had personal laptops that they used to conduct UMC business,  
14 including SEIU labor negotiations in 2009.)
- 15 2. UMC did not include Claudette Myers who is the Executive Assistant to John  
16 Espinoza, Chief Human Resources Officer at UMC, in the initial custodian group  
17 even though Mr. Espinoza stated in his custodian interview that Ms. Myers  
18 maintained electronic filing, regularly accessed both Mr. Espinoza's calendar and e-  
19 mail, archived Mr. Espinoza's e-mail and calendars, and sent email and documents on  
20 Mr. Espinoza's behalf. *See* Exhibit D, 15 to 17.
- 21 3. UMC never collected ESI from any UMC network file shares. *See* Exhibit B (hearing  
22 transcript from 04/07/14) at 116: 2-10 (Mr. Schaibley states that UMC did not collect  
23 any of the network file shares.) This means that UMC never collected any  
24 information from the UMC payroll network file share. *See* Exhibit D (custodian  
25 interviews) at 8, 13, 21, and 22 (Custodian interviews taken of John Mumford, Brian  
26  
27  
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1 Brannman, John Mumford, and Doug Spring all indicate that they stored documents  
2 in UMC network file shares.)

3 4. UMC did not collect ESI from the UMC Blackberry server for any of the twenty  
4 seven custodians. *See* Exhibit B (hearing transcript from 04/07/14) at 63 to 67 (Mr.  
5 Clark states that he was never instructed to preserve or collect communications or  
6 data from the UMC Blackberry server environment.)

7 5. UMC failed to review the collection scripts, and, as a result, failed to identify errors  
8 that occurred in the collection. *See* Exhibit A (hearing transcript from 04/04/14) at  
9 43:1-5 (Counsel Foley stated that she was never informed of collection errors by  
10 UMC or UMC ESI vendor.)

11 6. UMC's IT staff did not verify that they had provided to UMC's ESI vendor all the  
12 data they had collected. *See* Exhibit B (hearing transcript from 04/07/14) at 138:24-  
13 25; 139:1-15 (Mr. Edmonson indicates not all of UMC ESI collection was searched  
14 by him in response to the multiple production requests and attempts.) The Special  
15 Master notes that, because not all ESI collected by UMC was searched for  
16 production, the entire production discussion before the Magistrate Judge Leen was  
17 based on a false premise.

18  
19 **B. UMC Failed to Perform Custodian Interviews.**

20 UMC failed to perform custodian interviews and this contributed to many of the above  
21 collection issues. *See* Exhibit A (hearing transcript from 04/04/14) at 50:3-25; 51:1-5 (UMC  
22 states that no custodian interviews were performed by it on or before the Special Master  
23 proceedings.)  
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1           **C.       UMC and UMC ESI Vendor Did Not Create Any Chain of Custody Paper Work**  
 2           **for any of the ESI that was Collected by the UMC IT Department.**

3           On March 18, 2014, Special Master Garrie ordered UMC to create Chain-of-Custody  
 4 paper work before the hearing on April 4, 2014. While UMC did submit a chain-of-custody, it  
 5 was inadequate for its purpose. *See* Exhibit A (hearing transcript from 04/04/14) from 46 to 48.  
 6 Specifically, the chain-of-custody failed to record several things, including (i) what sources  
 7 UMC collected data from for each of the twenty seven (27) custodians, (ii) how they identified  
 8 the ESI, (iii) how they collected the ESI, (iv) how the ESI was preserved, (v) what criteria were  
 9 used to identify the ESI that was collected.

10  
 11                           **ISSUES WITH UMC PRESERVATION EFFORTS**

12           UMC was informed by Plaintiffs and the Court multiple times of its obligation to  
 13 preserve information, including on: August 6, 2012, November 6, 2014, March 10, 2014, March  
 14 18, 2014 and April 4, 2014. *See e.g.*, Exhibit E (preservation letter sent to UMC); Exhibit F  
 15 (internal UMC email informing patient service leaders to preserve documents); Exhibit G  
 16 (deposition testimony of Mr. Espinoza where he states he is aware of his duty to preserve  
 17 documents). Despite this it appears that UMC did not take the necessary steps required to ensure  
 18 preservation of relevant ESI by all custodians. *See* Exhibit B (hearing transcript from 04/07/14)  
 19 84:1-15 (Ms. Kisner states she did not receive a preservation notice and yet Ms. Kisner is one of  
 20 the UMC IT employees responsible for wiping blackberry devices.)

21           It appears that UMC has not preserved:

- 22                   1. Data on the UMC Intranet. *See* Exhibit B (hearing transcript from 04/07/14) at  
 23                   45:10-18; 46:12-20 (UMC states that did not collect or preserve ESI that  
 24                   existed on its intranet.)  
 25  
 26  
 27  
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- 1                   2. UMC network file shares. *See* Exhibit B (hearing transcript from 04/07/14) at  
2                   45:10-18; 46:12-20 (UMC states that did not collect or preserve ESI that  
3                   existed on the network file shares.)
- 4                   3. UMC e-mail and messages stored on the blackberry server. *See* Exhibit B  
5                   (hearing transcript from 04/07/14) at 36:3-25; 63:21-25; 64:1-10; 65:1-23;  
6                   83:6-18 (Multiple UMC IT stakeholders state that they have not yet preserved  
7                   the blackberry server data as of April 7, 2014, and only gave the IT individual  
8                   who could effectuate preservation a notice two weeks ago.)
- 9                   4. UMC failed to preserve the computers of the twenty seven (27) UMC  
10                  custodians. *See* Exhibit B (hearing transcript from 04/07/2014) at 112:1-18,  
11                  127 - 129; Exhibit H at 9 (Declaration from Dan Small that includes as an  
12                  exhibit an e-mail sent to all UMC employees that states many UMC  
13                  employees store documents on their local computers.)  
14

15               In addition, UMC is still unable to answer questions as to what data preservation policies  
16               have been implemented on their blackberry server and intranet. *See* Exhibit B (hearing transcript  
17               from 04/07/2014) at 98-102 (Several UMC IT employees state they do not know the policies  
18               implemented on UMC Blackberry server or intranet.)  
19

#### 20                   **ISSUES WITH UMC FIRST, SECOND, AND THIRD PRODUCTION**

21               The UMC productions suffered from certain technical issues that prevented appropriate  
22               search and collection. *See* Exhibit I (UMC ESI vendor findings regarding production) at 3 (states  
23               that “[d]espite the manufacturers claims of compatibility the results of these tests show that it is  
24               likely that most errors were caused by P2 Commander not processing the source files  
25               accurately.”) It appears that the software tool chosen by UMC, while used in the industry, did  
26               not work. Special Master Garrie was able to resolve these technical issues.  
27  
28

1 In addition, UMC failed to identify several encrypted files in production, which were not  
 2 searched. *See* Exhibit B (transcript of hearing on 04/07/2014) at 26-29 (UMC ESI vendor states  
 3 there were various encrypted files which included two DMG files for Macintosh, which UMC is  
 4 unable to explain since none of the custodians supposedly had or used Macintosh devices.)

### 5 **POSSIBLE SPOILIATION ISSUES**

6 UMC has yet to accomplish a complete collection of all responsive ESI. This fact,  
 7 together with the issues identified above, suggests potential spoliation of relevant evidence.  
 8 Spoliation will be the subject of further attention by Special Master Garrie, and will be one of the  
 9 topics addressed in his final order.  
 10

11 IT IS HEREBY FURTHER ORDERED THAT Plaintiffs and UMC will have done or do  
 12 the following:

#### 13 **Plaintiffs.**

- 14 1. Plaintiffs will have provided written questions regarding custodian interviews in advance  
 15 of the phone hearing on April 10, 2014.
- 16 2. Plaintiffs are to be prepared to discuss, at the telephonic hearing on April 15, 2014, the  
 17 file types to be searched by UMC.
- 18 3. Plaintiffs are to provide the Special Master with a letter or affidavit explaining why they  
 19 believe Lonnie Richardson, Ernie McKinley, and Lawrence Bernard should be added to  
 20 list of custodians.
- 21 4. Plaintiffs will have provided, by April 11, 2014, to Special Master Garrie results of UMC  
 22 SAP data analysis from 10 opt-in packets.
- 23 5. Plaintiffs will file with the Court, by April 17, 2014, the amended ESI Protocol..  
 24

#### 25 **Defendants.**

- 26 1. UMC to start producing data to Plaintiffs' on or before April 22, 2014 at 10:30am PST,  
 27 starting with custodian John Espinoza. UMC production is to follow the amended ESI  
 28

1 Protocol.

- 2 2. UMC ESI expert is to provide Special Master Garrie and Plaintiffs with a spreadsheet on  
3 or before April 14, 2014. The spreadsheet shall set-forth a count of the total number of  
4 emails that were lost in the recovery process.
- 5 3. UMC is to provide the Special Master with the following on or before April 16, 2014,  
6 unless noted otherwise:
- 7 • UMC archiving policy for the data stored on the UMC intranet.
  - 8 • Name and contact details of the individual(s) in UMC IT department who implement  
9 the record/data retention schedules for emails, Blackberry communications, and  
10 SAP/Kronos systems.
  - 11 • Specific pages of UMC retention and deletion policies/guidelines for the following  
12 systems: network file-shares, e-mail, blackberry devices blackberry server, SAP  
13 server, Kronos, and any other internal systems used by the custodians.
  - 14 • Complete list of all UMC custodians that have smartphones that are either UMC  
15 issued or personal that are used to conduct UMC business.
  - 16 • Spreadsheet that details the network file share mappings of the initial six custodians  
17 by April 15, 2014, and the remaining custodians by April 21, 2014.
- 18 4. UMC is to submit by April 15, 2014, the following documents, unless noted otherwise:
- 19 • Explanation of UMC Blackberry server configuration during the time period in  
20 question.
  - 21 • Clarification of how UMC Blackberry environment operates with UMC Exchange  
22 environment during the time period in question.
  - 23 • Explanation of McAfee configuration during the time period in question.
  - 24 • Enhanced data map that includes the data repositories at UMC clinics.
  - 25 • USB connectivity logs for the initial six custodians by April 18, 2014.
  - 26 • Spreadsheet that lists which of the twenty seven (27) UMC custodians are using  
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1 Windows XP on their desktop today. In addition, the spreadsheet should identify  
2 which of these UMC custodians' computers, laptops, or other devices have been  
3 updated since 2011. The spreadsheet also should identify any computers or devices  
4 these custodians access more than 5 times a month.

- 5 • Affidavit or declaration from UMC employee Ms. Kisner that identifies all wiping  
6 that occurred with respect to the mobile devices for each of the twenty seven (27)  
7 custodians, including personal smartphones, on or before April 18, 2014. For the  
8 sake of clarity, Ms. Kisner should identify if she or anyone on her team has ever  
9 configured or been asked to configure a smartphone to access UMC e-mail system for  
10 any of the twenty seven (27) custodians, including personal smartphones.
- 11 • UMC is to provide on or before April 18, 2014 a spreadsheet that lists all requests  
12 made to UMC internal IT support/help desk system to assist with mobile devices or to  
13 create backups (e.g., burning CD/DVD) for each of the twenty seven custodians for  
14 the time period in question.
- 15 • Screen shot or affidavit identifying if UMC OWM configuration sets a flag at the  
16 server level not to cache the body of the messages to the web client.
- 17 • Spreadsheet of all network file share folders created by UMC employees or  
18 consultants in connection with the Department of Labor investigation, and it also  
19 should identify which custodians had access to these folders.
- 20 • Detailed log files that show when UMC employees accessed UMC systems via the  
21 web or VPN during the relevant time period.
- 22 • A letter stating the initial date of the Department of Labor investigation.
- 23 • An affidavit of declaration by April 17, 2014 that updates the UMC ESI vendor's  
24 Scan/Repair findings to reflect the correct number of OST and PST files for the initial  
25 custodians, and it is to include an explanation as to why this error occurred.
- 26 • UMC is to work with the Special Master to determine if the initial six UMC  
27  
28



1           custodians used personal mobile devices to conduct UMC business, and be prepared  
2           to discuss at the April 15, 2014 telephonic hearing.<sup>1</sup>

3           5. UMC is to provide, on or before April 16, 2014, a letter to Special Master Garrie and  
4           Plaintiffs a letter affirming that, on a going forward basis, the following ESI repositories  
5           are being preserved using industry best practices:

- 6           • All data on e-mail lists,
- 7           • Data stored on Blackberry server for the twenty seven (27) custodians
- 8           • All network file shares that contain responsive data, including: Department of  
9           Labor investigation folder;
- 10          • Doug Spring UMC issued laptop
- 11          • James Mumford personal laptop that was used for UMC business
- 12          • All UMC computers, laptops, tablets, or other devices used by twenty seven  
13          custodians because of UMC email.
- 14          • All network files shares, including those identified in the custodian interviews  
15          provided to Special Master Garrie.
- 16          • UMC IIS servers, lotus notes/domino server, and any other server used by UMC  
17          intranet.

18           6. UMC is to amend the chain of custody forms and submit them to Special Master Garrie  
19           and the Plaintiffs by April 14, 2014. The amended chain of custody forms will include  
20           the following: details as to what information was collected by UMC for each custodian;  
21           

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22  
23           <sup>1</sup> UMC circulated proposed additional search terms to be used to search the ESI UMC it collected to date, to  
24           ascertain whether the initial six UMC custodians used personal mobile devices to perform UMC related business.  
25           *See* Exhibit C (rough hearing transcript from 04/10/2014) at 7:4-22. Plaintiffs provided their comments to the  
26           proposed search terms with respect to the mobile devices. Special Master Garrie reviewed the search terms and  
27           ordered the parties to search the ESI collection with the following terms: “iPad”, “iPhone”, “Android”,  
28           “Blackberry”, “Blackberry Curve”, “Windows Phone”, “Sent from my”. UMC is to search the UMC collection for  
          each of the initial custodians with a date range from June 2008 to present. In addition, UMC will perform the search  
          and provide the results to the Special Master before April 15, 2014 at 12pm. *See* Exhibit C (rough hearing transcript  
          from 04/10/2014) at 77:3-11. UMC will provide the Special Master with remote access to review the search term  
          results on April 15, 2014. *Id.*

1 identify what ESI sources UMC collected from for each custodian; UMC is to update the  
2 chain of custody forms to include details for each mobile device it collected; and MD5  
3 hash values for each evidence container that was collected.

- 4 7. UMC is to provide a declaration or affidavit, on or before April 18, 2014, to Special  
5 Master Garrie from the original e-discovery provider that addresses, the following: (i)  
6 how they failed to properly collect the ESI that UMC initially collected; (ii) why they  
7 were unable to collect in a forensically sound manner the ESI gathered by UMC either in  
8 April and August. UMC Counsel is to submit a two page letter to Special Master Garrie  
9 on or before April 21, 2014, that explains how UMC Security individual, UMC Counsel,  
10 UMC current forensic expert, and UMC former forensic expert did not realize the ESI  
11 collection being searched was not the entire ESI repository collected by UMC. In  
12 addition, UMC ESI expert is to submit an affidavit on or before April 25, 2014, which  
13 identifies each and every file that was collected by UMC and not included in UMC's  
14 first, second, or third ESI production.
- 15 8. UMC is to identify the personal email addresses for the six initial custodians, and run a  
16 search for these email addresses and review the results to determine if these custodians  
17 were using their personal email address to conduct UMC business. UMC is to notify the  
18 Special Master, on or before April 21, 2014, of the results of the search.
- 19 9. UMC counsel is to review Plaintiffs' prior request for documents, search the updated  
20 UMC ESI collection, and produce any responsive ESI on a rolling basis starting no later  
21 than April 24, 2014.

#### 22 **HEARING DATES**

23 The following dates for hearings are as follows: April 15, April 22, and May 7. All  
24 hearings will be held at the Las Vegas court house or telephonically with a court reporter present.  
25 The Special Master will coordinate with the court to confirm space is available. The Special  
26  
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1 Master Orders the parties to be PREPARED and their ESI and UMC IT EXPERTS TO BE  
2 AVAILABLE either by phone or in-person.


3 At the hearing on April 22, 2014, the Special Master has ordered Lawrence (Larry)  
4 Barnard, Chief Executive Officer, Ernie McKinley, Chief Information Officer, and John  
5 Espinoza, Chief Human Resources Officer to appear at the hearing, their presence being  
6 necessary to provide a complete understanding of UMC's discovery related actions and inactions  
7 to date.

8 The Special Master Orders the parties to provide all materials to be discussed at the  
9 hearing at least 24 hours prior to the hearing.

10 **TIME ESTIMATE**

11 The Special Master at this time is unable to provide a precise estimate as to the amount of  
12 time required to perform the work set-forth above.

13  
14  
15  
16 **SO ORDERED:**

17 

18 Daniel B. Garrie, Esq.  
19 Electronic Discovery Special Master

20  
21 DATED this 14 day of April, 2014.

# Exhibit A

Rough Draft of Special Master's Hearing April 4, 2014

Page 1

1 4-4-14 ROUGH DRAFT OF SPECIAL MASTER'S HEARING

2

3 This realtime draft is unedited and  
4 uncertified and may contain untranslated stenographic  
5 symbols, an occasional reporter's note, a misspelled  
6 proper name and/or nonsensical word combinations.

7 This is an unedited version of the deposition  
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12 part as the official transcript. This uncertified  
13 realtime rough draft version has not been reviewed or  
14 edited by the certified shorthand reporter for  
15 accuracy. This unedited transcript is computer  
16 generated and random translations by the computer may  
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18 on the final certified transcript.

19 Due to the need to correct entries prior to  
20 certification, the use of this realtime draft is only  
21 for the purpose of augmenting counsel's notes and  
22 cannot be used to cite in any court proceeding or be  
23 distributed to any other parties.

24 Acceptance of this realtime draft is an  
25 automatic final copy order.

Rough Draft of Special Master's Hearing April 4, 2014

Page 2

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA  
3 BEFORE SPECIAL MASTER PRESIDING, DANIEL GARRIE  
4  
5 DANIEL SMALL, CAROLYN SMALL, )  
6 WILLIAM CURTIN, DAVID COHEN, )  
7 LANETTE LAWRENCE, and LOUISE )  
8 COLLARD, Individually, and on )  
9 Behalf of All Other Persons ) Case No.  
10 Similarly Situated, ) 2:13-cv-0298-APG-PAL  
11 Plaintiff, )  
12 vs. )  
13 UNIVERSITY MEDICAL CENTER OF )  
14 SOUTHERN NEVADA, )  
15 Defendant. )  
16 \_\_\_\_\_ )

17 \*\*\* ROUGH DRAFT \*\*\*

18 TRANSCRIPT OF SPECIAL MASTER'S HEARING

19 Taken on Friday, April 4, 2014  
20 At 9:07 a.m.

21 At 333 South Las Vegas Boulevard  
22 Las Vegas, Nevada

23 REPORTED BY: Janet C. Trimmer, CRR, CCR No. 864  
24  
25

Rough Draft of Special Master's Hearing April 4, 2014

Page 3

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9 Also Present:

10 DOUGLAS FORREST, ESQ.  
11 DEAN SCHAIBLEY  
12 BRUCE PIXLEY (Via Telephone)

13

## Rough Draft of Special Master's Hearing April 4, 2014

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## 1 I N D E X

2

## E X H I B I T S

3 NUMBER

PAGE

DESCRIPTION

4 Exhibit 1

6

"Special Master E-Discovery  
Order"

5 Exhibit 2

8

"PST Repair and Production Tests  
For UMC"

6

7 Exhibit 3

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Chain of custody document

7

8 Exhibit 4

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UMC's data backup and  
restoration policy

8

9 Exhibit 5

56

E-mail from Cindy Dwyer to  
patient service leaders dated  
4-15-03, Bates UMC100004

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11 Exhibit 6

120

Letter dated 8-6-12 from David  
O'Mara to Brian Brannman

12

13 Exhibit 7

151

Document titled "Payroll  
Correction," Bates UMC100000 to  
48

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15 Exhibit 8

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Letter dated 9-26-12 from John  
Espinoza to YBelka Hernandez,  
Bates UMC000006 to 7

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Rough Draft of Special Master's Hearing April 4, 2014

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1 \*\*\*\*\*Proceedings\*\*\*\*\*

2

3 THE SPECIAL MASTER: I'm going to get started  
4 now. This is the hearing, just for the record  
5 purposes today, in regards to resolving a series of  
6 e-discovery and collection-based issues.

7 There was a prior order. I forget the day it  
8 was issued. Does anybody have a copy of the prior  
9 order that was issued by the Court?

10 MR. TOSTRUD: Yes.

11 THE SPECIAL MASTER: I just want to enter it  
12 in so that we have the record, because we are going to  
13 use that as sort of a framework for our conference  
14 today.

15 MR. TOSTRUD: Just to be clear, you would  
16 like a copy of the order appointing you?

17 THE SPECIAL MASTER: Not appointing me. The  
18 subsequent one where I issued an order saying we are  
19 going to cover --

20 MR. GODINO: The special master e-discovery  
21 order?

22 THE SPECIAL MASTER: Yes. Off the record.

23 (OFF RECORD.)

24 THE SPECIAL MASTER: Back on the record.

25

Rough Draft of Special Master's Hearing April 4, 2014

Page 6

1 (Exhibit 1 was marked

2 by the Certified Court Reporter.)

3 THE SPECIAL MASTER: We're going to use this  
4 order as a framework for parts of the conversations  
5 throughout the day today and we'll touch on certain  
6 things.

7 I have high hopes that we will make dramatic  
8 progress. I spent a lot of time reviewing materials  
9 and understanding everything. I'm going to quickly go  
10 off the record.

11 (OFF RECORD.)

12 THE SPECIAL MASTER: Back on the record here.

13 So going forward, I had a chance to review  
14 all of the materials, which was very extensive and  
15 complete, and I also received the chain of custody  
16 interview forms, etc. There will be a discussion  
17 about privilege, and we will certainly touch on that.

18 Before we get to that, though, I wanted to  
19 check: The PST repair, can we enter that into  
20 evidence? Is there any objection as privileged by  
21 counsel?

22 MS. WITTY: No.

23 THE SPECIAL MASTER: So I would like to enter  
24 into evidence, provide a copy. I have three copies  
25 printed. I'm going to go for the easy ones to start,

Rough Draft of Special Master's Hearing April 4, 2014

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1 and then we'll progressively deal with the more  
2 challenging issues. But I want everybody to feel at  
3 least we are making progress to start.

4 So as they are entered into evidence, I'm  
5 going to turn to our colleague. Did you enter your  
6 name and your card?

7 MR. EDMONDSON: I still don't have a card.  
8 She has my name.

9 THE REPORTER: I have his name.

10 THE SPECIAL MASTER: Do you want me to call  
11 you Joe or Joseph?

12 MR. EDMONDSON: Joe is fine.

13 THE SPECIAL MASTER: Joe, I'm going to ask  
14 you a bunch of questions about this material. I would  
15 like counsel to get a copy of it, and before I get  
16 into it, I'm going to explain what it is.

17 MR. GODINO: We have somebody on the phone.

18 THE SPECIAL MASTER: Oh, you do? Are they on  
19 the phone? Have they dialed in?

20 MR. GODINO: We were told him that the Court  
21 would dial him.

22 (Bruce Pixley now present via telephone.)

23 THE SPECIAL MASTER: Thank you for joining us  
24 today.

25 Unfortunately, we don't have wireless

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1 Internet so you can't see the exhibits as they are  
2 going in.

3 MS. WITTY: We do have wireless.

4 THE SPECIAL MASTER: Oh, we do?

5 MS. WITTY: Yes.

6 THE SPECIAL MASTER: So it might be useful to  
7 provide their ESI expert with a soft copy of the...

8 So Bruce, this is Daniel. We are going to  
9 arrange so that when we have exhibits entered, that  
10 you will receive soft copy of them when they pertain  
11 directly to ESI issues, so that way you can work with  
12 your counterparts as necessary.

13 MR. PIXLEY: Okay. Thank you.

14 THE SPECIAL MASTER: Okay, Joe. Ready?

15 MR. EDMONDSON: Yes.

16 THE SPECIAL MASTER: Did the other side get  
17 it?

18 MR. TOSTRUD: Yes, we have a copy.

19 THE SPECIAL MASTER: And it's Exhibit 2.

20 (Exhibit 2 was marked  
21 by the Certified Court Reporter.)

22

23 JOSEPH EDMONDSON - EXAMINATION

24

25 BY THE SPECIAL MASTER:

1 Q. So I want to start at the top and go all the  
2 way through, but before I jump into it: So you, the  
3 PST -- first things first. It certainly appears that  
4 Paraban does not work?

5 A. Yes.

6 Q. No?

7 A. In this case, that is correct.

8 Q. I mean, in this particular case with this  
9 particular situation, based on the table you provided,  
10 it's very evident that, contrary to the e-mails and  
11 their own direct statements saying that it would work,  
12 it didn't work.

13 The good news is -- why don't you walk us  
14 through what you did for each of the custodians. And  
15 I particularly want to -- when we are going through  
16 them with John Espinoza, I'd particularly love to know  
17 where you got the PST and OST files from. We can  
18 table that for downstream.

19 A. Okay.

20 Q. The PST/OST file question arises from, the  
21 collection script that was run, does not appear to  
22 have collected PST or OST files relating to them. So  
23 one of those issues we'll talk about a little  
24 downstream. So I'm a little -- I want to know how you  
25 got them. But we'll get to that in a minute.

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1           So why don't you walk me through what you  
2   did, starting with you identify PSTs and OSTs. How  
3   did you identify them?

4           A. I filtered an EnCase by extension.

5           Q. And this is total number?

6           A. Yes.

7           Q. This is total number of the entire case file?

8           A. Inside the case file, yes, which was the EO 1  
9   that I had created from the A.

10          Q. And we'll get to the chain-of-custody piece  
11   later.

12          So this is the universe of what you working  
13   for OST and PST files?

14          A. Correct.

15          Q. What about MBA, like Outlook Express?

16          A. Outlook Express, there were some files, but I  
17   didn't run the -- scan PST on those.

18          Q. Okay. You need to run them on that as well.

19          A. Okay.

20          Q. Because it would appear -- and we will touch  
21   on that -- that as much as people want to tell users  
22   to use a certain system, at least it would appear,  
23   based on the collection script, that either their  
24   children were using or they were using Outlook Express  
25   in lieu of Outlook at least, one or two of them, and

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1 we'll touch on that later. But just please run it on  
2 Outlook Express.

3 What were the results -- so you mentioned  
4 Jackie Panzeri?

5 A. Yes.

6 Q. Walk me through Panzeri.

7 A. Two of her PSTs failed.

8 Q. For the record, who is Jackie Panzeri?

9 MS. FOLEY: Payroll.

10 MS. WITTY: Jackie Panzeri is payroll manager  
11 at UMC.

12 BY THE SPECIAL MASTER:

13 Q. So keep going. So she has --

14 A. Two of her PSTs failed when we were in  
15 scanned PSTs, and the error suggested that it was an  
16 ANSI format PST that was over 2 gigs. So it had to be  
17 trimmed in order to successfully run the scanned PST.

18 Q. So we're on the same page, those are the only  
19 two you came across with errors?

20 A. Well, they are the only two that failed.

21 Q. That failed.

22 A. Yes.

23 Q. When they failed, just so we are on the same  
24 page, what did you do when they failed?

25 A. I then ran PST 2 gig to trim off the end of

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1 the file. So I started at 10, to see if it would  
2 actually repair after that. If it repaired, remove  
3 only 5 from the original, try again. Till I got the  
4 smallest amount that I could remove and still repair  
5 it successfully.

6 Q. You went from 2 gigs to 36 megs?

7 A. Yes.

8 Q. And then 2 gigs to 512 megs?

9 A. Yes.

10 Q. That's a big haircut, so to speak?

11 A. Yes, it is.

12 THE SPECIAL MASTER: We will revisit those  
13 two mailboxes or those two PST files.

14 You didn't have -- and we'll get to -- we'll  
15 touch on the collections.

16 Thank you to you. I didn't catch your name.

17 MR. SCHAIBLEY: Dean Schaibley.

18 THE SPECIAL MASTER: Thank you, Dean, from  
19 UMC, showing up. I like to have people with feet on  
20 the ground, because at the last hearing there was a  
21 little -- more in the clouds, we had a  
22 much-higher-in-the-air perspective, and so this will  
23 be pretty much more useful.

24 Q. So you trimmed them, but you only found two  
25 that failed?



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1 A. Correct.

2 THE SPECIAL MASTER: And you provided me with  
3 those log files, and I started to review them. But  
4 would you have any objection, Counsel, to the other  
5 side seeing the results of the log files that he  
6 was -- the repair --

7 MS. WITTY: From the scan and repair?

8 THE SPECIAL MASTER: Yes.

9 MS. WITTY: No, there is no issue.

10 THE SPECIAL MASTER: So I'm going to order  
11 you to turn them over to the other side.

12 I would say we would enter them into  
13 evidence, but they are way too long, and nobody  
14 deserves to have to carry those around.

15 But let the record reflect that I have  
16 ordered the parties to turn over the scan repair logs  
17 that were provided to me in an e-mail by counsel in a  
18 timely fashion, meaning within 24 to 48 hours.

19 Q. So tell us about the results of the tests  
20 here.

21 A. The results, yes. What I did was, I then  
22 took the repaired PST files, located the --

23 Q. For those two, or for all of them?

24 A. For all of them. So I took --

25 Q. Were there any other errors on the repairs

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1 that you ran, or was this it?

2 A. Those were the only errors that failed.

3 Q. But there were other errors?

4 A. There were other things that were repaired.

5 Within the log files, there were other errors that

6 were repaired in other PST and OST files.

7 THE SPECIAL MASTER: I believe that almost  
8 every one of them at some point had some sort of  
9 repair done. The logs will reflect that and it will  
10 allow the other side to see what exactly...

11 Mr. Pixley, can you hear me?

12 MR. TOSTRUD: Bruce?

13 MR. PIXLEY: Yes, I've been able to hear.

14 THE SPECIAL MASTER: So I'm going to let  
15 counsel figure out who they want to send them to look  
16 at as well I'm looking at them. We'll have a  
17 conversation about what we will do with the errors,  
18 but let's first talk about what we found and what we  
19 can do going forward, and then we'll deal with the  
20 other pieces that remain from that.

21 Q. So keep going.

22 A. Okay. So I took the Bates numbers from the  
23 production and the discussion that we had before, and  
24 I look --

25 Q. And that's referring to Mr. Pixley's

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1 declaration where he provided where he identified a  
2 series of e-mails?

3 A. Correct. And so I located the original  
4 source of those e-mails, and then --

5 Q. In the containers; right? In the PST/OST  
6 files?

7 A. Yes, which PST or OST they came from, and  
8 then I exported using P2 Commander in both EML and MSG  
9 format. I also mounted those PSTs in EnCase 6 and 7  
10 and exported the same file in MSG format from both of  
11 those. That way we could compare all four possible  
12 production options.

13 THE SPECIAL MASTER: And what was the end  
14 result, at a summary level? And we'll go through it.

15 Do you guys want to go through each one?  
16 They are pretty much the same, but we can if you want.

17 MR. TOSTRUD: You mean each of the different  
18 custodians?

19 THE SPECIAL MASTER: No, we'll go through  
20 that later. All we're discussing right now is that we  
21 ran, scan, and repaired, and then I ordered them to  
22 look at -- and in Mr. Pixley's declaration he  
23 identifies a series of e-mails that were problematic.  
24 I told him to focus on those specific ones and see if  
25 the software breaks for Paraban, and if Paraban

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1 doesn't work, find me something that works.

2 He's now talking about EnCase 6 and EnCase 7  
3 and the results of what he found. And if you will  
4 look at the exhibit, you will see the Bates number  
5 1 --

6 MR. TOSTRUD: Uh-huh.

7 THE SPECIAL MASTER: It has, just for the  
8 record, it says P2 commander software EML, the native  
9 body view is blank, the native attachment view is a  
10 text file, that's mime, eCapture text was a raw mime,  
11 and Ipro eCapture was left blank.

12 If you then go to what P2 Commander did with  
13 the MSG file, it was even more spectacular. It  
14 couldn't open them in the native body view; it  
15 couldn't actually open them in the native attachment  
16 view. But it did appear correct in the eCapture text  
17 extract.

18 Then we look at EnCase 6 and EnCase 7 and we  
19 see there were no problems, which means that at the  
20 end of the day, it appears based on if you look at all  
21 the different specific Bates stamp pages, that if you  
22 use EnCase 6 or 7 to perform the extraction and that  
23 piece of it, it will resolve or remediate at least the  
24 sample of e-mails that you provided as a test case, it  
25 fixes all of those, which then leads me to believe

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1 that the error was with the Paraban software itself.

2 Does that make sense? Any questions?

3 Is that accurate?

4 MR. SCHAIBLEY:

5 A. Yes.

6 THE SPECIAL MASTER: Does counsel have any  
7 questions? We'll talk about the error logs and all of  
8 that a little bit later. I'm just trying to get  
9 through at the very least we know that we can now  
10 process e-mail.

11 MR. TOSTRUD: I don't think we'll need to go  
12 through each one individually.

13 THE SPECIAL MASTER: Okay. Good. You never  
14 know. If I don't ask, I'll never know. I'm going to  
15 go off the record for a second.

16 (OFF RECORD.)

17 THE SPECIAL MASTER: I'm going to -- Joe --  
18 I'm going to request -- or Mr. Edmondson. My  
19 apologies -- that you process everything again through  
20 EnCase 7, because -- and assuming that we don't have  
21 Chinese character issues, we'll -- and recognizing  
22 fully and completely that there is a whole set of  
23 other issues that we need to have a conversation  
24 about, and counsel for UMC, that you need to be aware  
25 of, that the e-mails that were actually -- the PST and

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1 OST files themselves had errors, and we're not talking  
2 for some of these custodians that were identified on  
3 the list, particularly Ms. Panzeri, like her PST and  
4 OST collection itself; those e-mail containers had  
5 substantial issues.

6 So we have to have a conversation about how  
7 to deal with that and address that to make sure that  
8 the search you are running is actually of the e-mails  
9 that you believe to exist there and, if not, how we  
10 can address that.

11 But recognizing that, I'd like to suggest:  
12 You'll get the scan and repair logs, and I request  
13 that you guys, in some sort of timely fashion or by on  
14 or before Wednesday of next week, review them.

15 And if you have any -- we'll have a  
16 conversation about them, but if you want to raise any  
17 issues about them or things that you identify that we  
18 do not discuss today or in the hearing on Monday, we  
19 will talk about them.

20 I'd like to get it in writing by Wednesday,  
21 and so we can then either figure out if we need to  
22 have a phone hearing or an in-person hearing  
23 accordingly.

24 MS. WITTY: They should have received an  
25 electronic copy of the zip file containing those.

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1 THE SPECIAL MASTER: Did you receive it?

2 MR. TOSTRUD: Yes.

3 MR. GODINO: Yes.

4 THE SPECIAL MASTER: So counsel did receive  
5 it. Okay. So that's good news; right? I mean, there  
6 is a whole lot -- there is a litany of other things to  
7 cover, but at least now I think what I'm going to  
8 suggest -- I'm going to go off the record for one  
9 second.

10 (OFF RECORD.)

11 THE SPECIAL MASTER: Let's go back on the  
12 record.

13 MR. TOSTRUD: Plaintiffs are absolutely  
14 amenable to rolling production beginning next week or  
15 as soon as possible or practicable. We just want to  
16 put on the record that these five custodians and 10 or  
17 12 search terms, however we identified them, is an  
18 initial ESI --

19 THE SPECIAL MASTER: 100 percent.

20 MR. GODINO: Also, that this is a production  
21 of only e-mails.

22 THE SPECIAL MASTER: Well, that will be -- it  
23 will be a production -- I would request not only --  
24 when I said process, I meant process it all. It will  
25 be a process of whatever they collected, and we will

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1 have a conversation later today about what was  
2 actually collected, but it will be whatever was in the  
3 collection containers for each of these custodians  
4 that was provided by UMC to their initial forensic  
5 expert, then was provided to the next forensic expert,  
6 then was provided to counsel. So whatever fits within  
7 that realm of what was collected is what you will be  
8 getting in the rolling production.

9 MR. GODINO: Understood.

10 THE SPECIAL MASTER: The only -- if there are  
11 additional errors and etc., I would request that you  
12 notify me within 24 hours in writing. You don't have  
13 to be specific about it. Say we have identified a  
14 specific error issue, and we will either flag it and  
15 address that specific technical issue or, if  
16 necessary, we'll slow down the rolling production and  
17 address that, if necessary.

18 I'd like, if at all possible, make this  
19 production at least start moving somehow forward in  
20 some fashion, and I know at the very least e-mail  
21 works.

22 So I'm going to keep the bar low and go with  
23 just -- I know for a fact that whatever is sitting on  
24 this page was mounted and works. So I can rest  
25 assured that you'll receive those.



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1 Does counsel for UMC have any objection to  
2 that?

3 MS. WITTY: Can you clarify what you mean by  
4 the production for next Friday?

5 THE SPECIAL MASTER: What I do want by end of  
6 today -- and there will be a lunch break. I know  
7 that's, exciting as it may be, to not talk about work  
8 at lunch. I'm going to kindly ask that you look at  
9 your EnCase file and you coordinate with counsel to at  
10 least come up with a tentative schedule so that by the  
11 end of this hearing, we're walking out of this here  
12 saying by this day we will turn over one custodian,  
13 two custodian, three custodian, four custodian, five  
14 custodian; however it works, for whatever has been  
15 collected. We're not talking about what -- the scope  
16 of the collection -- we're not commenting at all on  
17 the collection. It's just what exists now that has  
18 been collected. Is that all right?

19 So I'm not going to order by Friday. I'm  
20 going to wait till the end of day today. I do request  
21 plaintiffs, please remind me need to make sure we  
22 cannot leave here until we have that set.

23 MR. TOSTRUD: Okay.

24 THE SPECIAL MASTER: I want to be clear. I  
25 fully intend to go home to Seattle today, so we're all

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1 on the same page.

2 So that's good news. So the good news is  
3 that hopefully we'll have a rolling production going  
4 forward of the five custodians that's pointed out.  
5 There is the initial conversation of 10 or 12 ESI  
6 terms, and hopefully that will be flowing, and there  
7 will be privilege logs created, and you can have a new  
8 sort of interactive dialogue with the Court around  
9 that.

10 Okay. Any questions around that?

11 I do want to stress, and we do need to, now  
12 that we've come up with that, I want to have a  
13 conversation about the errors. It sort of is  
14 troubling. I did look at the error log in some  
15 detail. Dean?

16 MR. SCHAIBLEY: Dean.

17 THE SPECIAL MASTER: What's your last name?

18 MR. SCHAIBLEY: Schaibley.

19 MR. GODINO: Excuse me. Bruce's call was  
20 dropped.

21 (Bruce Pixley was reconnected via telephone.)

22 THE SPECIAL MASTER: I want to talk now about  
23 the scan repair log issue. I realize on occasion that  
24 nothing is perfect and that you do occasionally have  
25 errors.

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1           It is not often you end up with having to cut  
2   1.95, 1.96 of gigs of the actual e-mail container  
3   itself. So that leads me to the question of the  
4   evidence that was collected and where it sits and the  
5   hash values.

6           So I'm going to table this. I'm going to ask  
7   plaintiffs, because I know you won't let me forget:  
8   Please remind that we have to revisit this and resolve  
9   this today.

10          But before we can actually resolve it, we  
11   need to have a broader conversation about the chain of  
12   custody and what was down and how it was collected.

13          I do want to commend counsel for UMC for  
14   undertaking a mammoth task of getting me the custodian  
15   interviews and getting them moving and forward, and I  
16   fully recognize that it is a function just as much of  
17   your clients as it is you being a lawyer, and so a  
18   give-and-take in that process.

19          With regards to the chain of custody, I would  
20   like to enter that into evidence. Is there any  
21   objection?

22          MS. WITTY: No.

23          THE SPECIAL MASTER: So I'm marking it  
24   Exhibit 3.

25

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1 (Exhibit 3 was marked

2 by the Certified Court Reporter.)

3 THE SPECIAL MASTER: So I want to understand,  
4 Dean -- okay. So first things first. I'm going to  
5 need them redone. I know that sounds like a shocker  
6 and I am being difficult.

7 But when I gave you my initial order --  
8 right? And I apologize. Maybe part of it sits on my  
9 shoulders -- what I was hoping you would do, for each  
10 custodian that was collected, you would specify --  
11 because the problem that I run into is -- and it's  
12 reflected by the -- understanding just for back  
13 purposes, if anybody has a bad back, feel free to  
14 stand.

15 The issue I have is that, for example, with  
16 Jackie or Mrs...

17 MR. TOSTRUD: Panzeri.

18 THE SPECIAL MASTER: Yes, Panzeri, the  
19 problem we have without having the chain of custody  
20 and the collection broken down for each one, we don't  
21 actually know what was actually collected and where it  
22 was collected from.

23 So what I need you to do, while I have  
24 managed to do it, I'm going to bestow upon you the  
25 opportunity and honor to say we collected -- I now

1 know you have all of the data, because I have had the  
2 opportunity to read it.

3 You need to say, "I ran a script and we  
4 collected from these servers" and say, "This server  
5 maps to this." You have given me the files. I have  
6 all of the data myself, but as exciting as that may be  
7 for me to do, I'm going to leave it in your trusted  
8 hands.

9 I need you to redo the chain of custody form,  
10 specify "I collected from these custodians from this  
11 server, this computer, this device," etc.

12 The reason why this is so important is that  
13 I'd like to start carving out the people we didn't  
14 have issue with. I'd like to start making progress so  
15 that we can say we have five, now we only have one  
16 person that's perhaps an issue, rather than we have  
17 right now all I have is for all five and so that makes  
18 the process a little more challenging.

19 So if you would be so kind -- is it clear  
20 what I'm expecting? That I'm expecting the  
21 custodian's name, then I'll give you an example. For  
22 HRD Spring, there was a source PDP 001 you collected  
23 from that, and then the script you ran has this very  
24 nice little text file in it that says how it played  
25 out. I'd like that to be attached.

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1 I don't need the filenames, I don't need the  
2 data, but I do need the results. I need to say this  
3 server and this is what we got. I don't need the  
4 filenames. I understand there could be issues there.  
5 But we need to know what was actually collected  
6 respectively, because it took a great deal of time.

7 So that's with regards to chain of custody.  
8 Is there any confusion there with regards to, not the  
9 mobile devices, this is specifically and relating only  
10 to the data UMC holds on site.

11 And also, did you collect from the BlackBerry  
12 servers?

13 MR. SCHAIBLEY: No.

14 THE SPECIAL MASTER: Off the record.

15 (OFF RECORD.)

16 THE SPECIAL MASTER: I'd like to know who  
17 within the UMC's legal group, be it outside counsel,  
18 inside counsel or whoever, was directing you and  
19 didn't bother to inform you that, hey, look, we need  
20 to include their mobile devices and the BlackBerry  
21 servers they use. I'd like to note who that person  
22 is, and I'd like to also understand has it been  
23 collected to date from the server.

24 MS. WITTY: No.

25 THE SPECIAL MASTER: That needs to happen

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1 now. So when we leave here, UMC needs to go to their  
2 BlackBerry server or their archive of the BlackBerry  
3 server, and I read the whole backup policy. So I'm  
4 not sure where it might fall within the  
5 classifications of the -- off the record.

6 (OFF RECORD.)

7 THE SPECIAL MASTER: Going on the record. I  
8 want to mark for the record the importance, and I'm  
9 ordering UMC counsel and, hopefully, with Dean, who is  
10 actually in network security and not the BlackBerry  
11 administrator, but hopefully he knows the right  
12 individual within UMC or goes to lunch with or somehow  
13 can connect counsel with that person.

14 I'm ordering UMC to immediately preserve, for  
15 whatever custodians they have represented to the Court  
16 are within the ambit of the initial collection, to be  
17 completed by no later than this coming Wednesday.

18 There is no excuse in my book for it not  
19 being done. A BlackBerry server you post on site,  
20 having administered one myself, having actually had to  
21 deal with the -- having to deal with the politics as  
22 well as the policies that go with it, it's not that  
23 hard. It's literally like counsel gives them a list  
24 of names and they literally log into the BlackBerry  
25 server and they check off the boxes and export them.

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1 I mean, it's not a -- I'm not asking for a  
2 lot of work to be done. We're talking about two,  
3 three hours. I'd like you to fill out separate chain  
4 of custody paperwork for that effort using the forms I  
5 provided and document them.

6 I'd also like counsel for UMC to work with  
7 whoever within the UMC organization is responsible for  
8 overseeing the backup, and it appears there are  
9 multiple groups that are involved in the backup, which  
10 is complete, would be useful to -- can we submit this  
11 and -- would counsel have any objection to --

12 MS. WITTY: The policies? No.

13 THE SPECIAL MASTER: -- having the policies  
14 put on the record?

15 So I'm going to put to the record UMC's data  
16 backup and restoration policy.

17 MR. TOSTRUD: Yes, Exhibit 4.

18 THE SPECIAL MASTER: Exhibit 4.

19 (Exhibit 4 was marked  
20 by the Certified Court Reporter.)

21 THE SPECIAL MASTER: And I also want the  
22 record to reflect that I recognize that UMC's counsel,  
23 having seen the custodian collection interview form  
24 and having recommended what it should say, I fully  
25 recognize that UMC itself needs to figure out how to



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1 communicate with that individual if they are running a  
2 BlackBerry server, which was represented by -- who is  
3 the guy that was here last time?

4 MS. WITTY: Mr. Ernie McKinley.

5 THE SPECIAL MASTER: Ernie McKinley  
6 represented that they administer -- is there a phone?

7 MR. GODINO: Sounds like a printer.

8 THE SPECIAL MASTER: -- represented that such  
9 a server does indeed exist. The custodian interviews  
10 seem to suggest that such thing exist. So I would  
11 like to see that collection immediately done and that  
12 preservation to immediately be done.

13 MS. WITTY: Can I clarify for the record:  
14 When you say "preservation," we have taken initiative  
15 to maintain all text messages and other information --  
16 (inaudible.)

17 THE REPORTER: I didn't hear the end of that.

18 MS. WITTY: We have taken the initiative to  
19 maintain all of their text messages and data on the  
20 BlackBerry server. I just want to make sure  
21 technically what to tell them.

22 THE SPECIAL MASTER: So technically I'm going  
23 to communicate here with my colleague here, Dean.

24 Dean, you know what a BlackBerry server is,  
25 right, at a high level?

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1 MR. SCHAIBLEY: Yes, sir.

2 THE SPECIAL MASTER: If you look at the  
3 scripts that were run, Dean was not given instructions  
4 to run a script or work with the BlackBerry server  
5 people to collect --

6 (Telephonic noise.)

7 THE SPECIAL MASTER: My phone's off.

8 Still on the record, a BlackBerry server,  
9 right, is its own repository for e-mailing everything.  
10 So the way it works is you have an exchange server and  
11 a BlackBerry server, and it depends how they are  
12 configured.

13 But based on my understanding of what was run  
14 on the collection script, that it seems to me that the  
15 BlackBerry server preserves a copy locally on the  
16 BlackBerry server as well.

17 I could be wrong.

18 MS. WITTY: I'll clarify it.

19 THE SPECIAL MASTER: I don't need it  
20 clarified, because I know that whatever is there --  
21 the text messages you are preserving of what he has  
22 imaged may be very different than what they have  
23 sitting on the server. The BlackBerry server has its  
24 own set of policies. So just because -- it happens a  
25 lot in banking, right? A banker will go out one

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1 night -- go off the record.

2 (OFF RECORD.)

3 THE SPECIAL MASTER: Go back on the record.

4 MR. TOSTRUD: On January 31, 2014, defendant,  
5 pursuant to an order from Judge Leen, produced text  
6 messages for, I believe, three people, three  
7 custodians, and represented to plaintiffs' counsel  
8 that those were all the messages that were available  
9 and that that was everything.

10 THE SPECIAL MASTER: I'll let the record  
11 reflect that, and as far as counsel knows, the problem  
12 that I've been able to discern is that UMC's counsel,  
13 internal in-house people, don't under -- there is a  
14 disconnect, because what was asked for makes a lot of  
15 sense.

16 You have a BlackBerry server. I see the  
17 script running. There must be a fundamental  
18 disconnect there between what was done and what was  
19 delivered, and I'll certainly let the record reflect  
20 that.

21 But irrespective of the record, I want it by  
22 Wednesday. Whoever is the BlackBerry administrator,  
23 take three hours out of their day and preserve  
24 whatever they do have for those 26 people from the  
25 BlackBerry server side.

1 I get the fact that we've done the individual  
2 devices, and we'll have a whole separate conversation  
3 about the individual mobile devices. Okay?

4 And I want a separate chain of custody form  
5 filled out for that effort. I don't need it for each  
6 individual custodian, but I do need to list the  
7 custodians that were collected, I need to know their  
8 directory password. I don't need to know the  
9 filenames, but I need to know you got the right people  
10 with the right custodians in the chain of custody  
11 paperwork so that way I don't have to read 1400 pages  
12 downstream.

13 Are we crystal-clear here? Like Dean, you  
14 know what I'm asking, right?

15 MR. SCHAIBLEY: Yes.

16 THE SPECIAL MASTER: Counsel.

17 MS. WITTY: Yes.

18 THE SPECIAL MASTER: He understands. He  
19 should be able to work with the right people within  
20 UMC's organization to get me what I'm asking.

21 Now, returning back to the original point of  
22 discussion, I want to understand the chain of custody,  
23 Joe. Walk me through this. I want to make sure I get  
24 this. There were multiple -- are you -- (inaudible).

25 (Reporter requested clarification.)

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1 THE SPECIAL MASTER: I asked Counsel Foley if  
2 she was just a partner on the case, and she said yes  
3 (to reporter).

4 The only reason I'm directing that to you  
5 because there have been multiple associates that have  
6 been involved in the chain of custody. I want to just  
7 trace back -- we're going to redo the chain of  
8 custodies, full stop, and provide the detailed  
9 information that's necessary.

10 But I want to understand just a couple of  
11 pieces of the information that were provided by Joe  
12 and how Joe got that information.

13 So, Dean, just so I get it, before we get to  
14 the mobile phones, how did this work? Did you get an  
15 order or a note or an e-mail, or how did you find out  
16 I'm supposed to go and get X, Y and Z people, just  
17 generally speaking?

18 MR. SCHAIBLEY: I received an e-mail stating  
19 that we needed to go and collect the e-mail and local  
20 and home folders for a list of 26 individuals.

21 THE SPECIAL MASTER: And you got that e-mail  
22 from...

23 MR. SCHAIBLEY: I received the e-mail back in  
24 April 2013 from the initial counsel litigation group.

25 THE SPECIAL MASTER: Got it.

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1 Counsel Foley, you guys were not involved at  
2 that time; correct?

3 MS. FOLEY: Correct. We came on in May, I  
4 believe.

5 THE SPECIAL MASTER: Okay. Because it gets  
6 really down to like it's sort of a weird coalescing of  
7 dates and things that all happened. Doesn't make  
8 anything all right. I'm just saying that it took me a  
9 while to understand who came when and where and did  
10 what.

11 So that, you got initially from a former  
12 counsel?

13 MR. SCHAIBLEY: Correct.

14 THE SPECIAL MASTER: You then went and ran  
15 this Robocopy script.

16 MR. SCHAIBLEY: Correct.

17 THE SPECIAL MASTER: Which, generally  
18 speaking, when was -- just for my own edification -- I  
19 hesitate to submit it to the record because it has all  
20 of the filenames in it and all of the details for  
21 everything. So I'm not going to put it on the record.  
22 I'm just going to ask questions about it, and I  
23 apologize. We'll talk about privilege. We can go on  
24 or off in just a couple of minutes. I just want to  
25 get my question answered first. On occasion, when I

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1 look at, for example, HRD Spring -- let's pick a  
2 better one -- off the record.

3 (OFF RECORD).

4 THE SPECIAL MASTER: Back on the record.

5 A couple of questions about the BlackBerry  
6 server:

7 I would like counsel to provide me -- do you  
8 have any data policies around how that works? Like  
9 how long you keep it and other sorts of...

10 MR. SCHAIBLEY: I don't know off the top of  
11 my head what that --

12 THE SPECIAL MASTER: If you have to say I  
13 don't know, just say I don't know. Totally okay.

14 I would like you to connect counsel from UMC  
15 with that person.

16 Counsel, I would like you to provide me with  
17 that information, how long do they keep the backups,  
18 how do they run, how far back does that information go  
19 for the BlackBerry server.

20 MR. O'MARA: That's on April 9th as well?

21 THE SPECIAL MASTER: Make it the 10th.

22 Let's talk about Mr. Espinoza.

23 So when I look through the collection for J,  
24 there are no PST or OST files in it. How did PST and  
25 OST files end up being collected? I'll tell you what

1 I did so you understand. I received the text files, I  
2 converted them to Adobe PDF. I then wrote a script to  
3 then go through and pull out every OST and PST file  
4 for each one.

5 When I ran it for Mr. Espinoza, unless it  
6 didn't work, I wasn't actually able to find any OST or  
7 PST files in there, which leads me back to my question  
8 of Joe Edmondson, who has two and two logged in his  
9 thing. Just trying to figure out how that ended up  
10 there.

11 I can show you. I have it here if you want  
12 to see how I ran it, Counsel, I mean, to explain to  
13 you exactly. I'm pretty sure there aren't any, I  
14 mean, unless you found some.

15 MR. SCHAIBLEY: No, there were no PSTs on his  
16 computer pull. When --

17 THE SPECIAL MASTER: Or OSTs, either one.

18 MR. SCHAIBLEY: When I do the collection,  
19 when it was requested for local folders, home folders  
20 and e-mail, the Robocopy script only goes and pulls  
21 their home folder and then it pulls the local profiles  
22 from whatever computers they've logged into.

23 As far as the e-mail box, what we do with  
24 that is we will go into Microsoft Exchange and, as an  
25 investigator, give ourselves back-end access to their



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1 mailbox and then open Outlook as that user on our  
2 desktop. We'll pull back all the deleted items,  
3 basically restore the entire mailbox, and then export  
4 it into a PST file. So that's their active current  
5 mailbox.

6 THE SPECIAL MASTER: I think I get it.

7 So we had two PSTs and two OSTs for  
8 Mr. Espinoza?

9 MR. SCHAIBLEY: Uh-huh.

10 THE SPECIAL MASTER: They were -- this is why  
11 chain of custody is so important and invaluable, so I  
12 will know I collected from this person's server rather  
13 than in this session.

14 So that's those four PSTs and OST files?

15 MR. SCHAIBLEY: Correct. The first data pull  
16 that was done in April would have had his first  
17 mailbox, and then when it was requested to rerun it in  
18 August, that would be the second PST.

19 THE SPECIAL MASTER: And that's in addition  
20 to all of the other PSTs or OSTs that may or may not  
21 have existed, as in some people's cases, within  
22 their...

23 MR. SCHAIBLEY: Their archives that they --

24 THE SPECIAL MASTER -- myself --

25 MR. SCHAIBLEY: -- themselves.

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1 THE SPECIAL MASTER: -- everywhere.

2 And do you use Commvault for any archiving or

3 just --

4 MR. SCHAIBLEY: Yes.

5 THE SPECIAL MASTER: You use CommVault

6 archiving?

7 MR. SCHAIBLEY: Yes.

8 THE SPECIAL MASTER: For e-mail?

9 MR. SCHAIBLEY: Not at this time -- not at  
10 that time.

11 THE SPECIAL MASTER: But today it is?

12 MR. SCHAIBLEY: It's being prepared to be  
13 installed, yes.

14 THE SPECIAL MASTER: So it's not rolled out  
15 yet?

16 MR. SCHAIBLEY: Correct.

17 THE SPECIAL MASTER: All right. Ironically,  
18 he had no failures on Mr. Espinoza.

19 However, we can turn to HRJ Mumford, and  
20 he -- what I am referring to, just for the record  
21 purposes again because of this issue, they ran a  
22 script, and that's how the whole entire collection was  
23 done for each custodian. In the process of running  
24 the script, I have several questions about that, but  
25 there were failures.

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1           And one thing they needed to make sure, when  
2   you collect everything, is that you -- that, A, when  
3   there is a failure, that counsel is -- how did that  
4   work? Because if you look at PITRDP20 on, I believe,  
5   page -- had two failures; and then if you look at  
6   WHRDTT12, there's 10 failures; and if you look at  
7   W11090, two failures; PB0R0 -- or it might be OM -- 12  
8   had two failures; UMC-FS01 had six failures.

9           In your process, did you notify -- when you  
10   provided this data and results to counsel, explain to  
11   me how it worked. So you run the script. If there is  
12   a failure, what happens?

13           MR. SCHAIBLEY: When we run the script, we  
14   don't go back and look at the log unless it's  
15   requested. We need to make sure we get that  
16   recovered.

17           THE SPECIAL MASTER: You are not the lawyer.  
18   You are just running the tech. I get it.

19           MR. SCHAIBLEY: Right.

20           THE SPECIAL MASTER: You ran it.

21           Is counsel aware of any of these failures in  
22   this collection?

23           MS. WITTY: We were not, until log files were  
24   provided from Mr. Edmondson.

25           THE SPECIAL MASTER: I'm going to order UMC

1 to quickly figure out, A, if any of the files did fail  
2 in the collection, because you -- that you have, and  
3 that they are -- because some of the files that failed  
4 were like .dat files and .htm files that not be as  
5 relevant as the .pst file.

6 But before we get to determining relevancy, I  
7 would like to know -- I'd like counsel to understand  
8 all of the things that weren't collected in the  
9 process of running that script.

10 I fully get that -- but just so I understand,  
11 you ran the script, then you output the result -- who  
12 did you give that to you? You got an e-mail, ran the  
13 script?

14 MR. SCHAIBLEY: Correct. Once all the data  
15 was collected, it was stored on a secure server that  
16 only the IT security team has access to.

17 THE SPECIAL MASTER: And that was, the whole  
18 pathway created a unique path?

19 MR. SCHAIBLEY: Correct.

20 THE SPECIAL MASTER: And you still have that  
21 today?

22 MR. SCHAIBLEY: Correct. And then from there  
23 the forensic investigator did forensic image.

24 THE SPECIAL MASTER: He didn't create any  
25 hash values -- so when the collection was done, just

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1 so I get this, they didn't actually go and collect for  
2 each custodian, creat an evidence container? They  
3 just took everything?

4 MR. SCHAIBLEY: Correct. And that's just  
5 UMC's process for running investigations, depending on  
6 when --

7 THE SPECIAL MASTER: No, I get why you did  
8 it.

9 (Reporter admonished re overtalk.)

10 THE SPECIAL MASTER: Repeat that.

11 MR. SCHAIBLEY: Just UMC's process for  
12 investigations when it's requested of investigating an  
13 individual, is grab everything.

14 THE SPECIAL MASTER: I'm going to quickly go  
15 off the record.

16 (OFF RECORD.)

17 THE SPECIAL MASTER: Back on the record. So  
18 I understand, you ran it, you copied the files,  
19 preserving the metadata according to the filters you  
20 set, the parameters of Robocopy. You copied that data  
21 to a separate server in your organization that only IT  
22 people had access to?

23 MR. SCHAIBLEY: Only IT security.

24 THE SPECIAL MASTER: At no time did counsel,  
25 your prior counsel in April, never asked you were

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1     there any, ever, errors?

2                 MR. SCHAIBLEY:  No.

3                 THE SPECIAL MASTER:  And at that time you  
4     hired -- a forensic person was brought in at the  
5     direction of prior counsel?

6                 MR. SCHAIBLEY:  Correct.

7                 THE SPECIAL MASTER:  That person created a  
8     set of forensic images?

9                 MR. SCHAIBLEY:  Correct.

10                THE SPECIAL MASTER:  Which was the  
11     collection, as far as everybody understood it, which  
12     is then what was turned over to you?

13                MR. SCHAIBLEY:  Yes.

14                MR. EDMONDSON:  It was turned over to --

15                THE SPECIAL MASTER:  Turned over to counsel.

16                And then you made a copy of it, and who has  
17     it today, in the evidence log sheet?

18                MR. EDMONDSON:  I have a copy that I work off  
19     of.  She has the original.

20                THE SPECIAL MASTER:  And it's reflected in  
21     the log.

22                So sequence again -- but, Counsel Foley, this  
23     is my question for you, and this is what I was  
24     originally getting at:

25                You were brought in in May, so when you guys

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1 received what you thought was these container files,  
2 as you understood it, it was no errors because nobody  
3 told you there were any errors?

4 MS. FOLEY: Yes, we didn't know exactly what  
5 it was.

6 THE SPECIAL MASTER: All right. Okay. When,  
7 Joe, you received it, did you receive the log files  
8 with this?

9 MR. EDMONDSON: I believe the logs are inside  
10 the container.

11 MR. SCHAIBLEY: Correct.

12 THE SPECIAL MASTER: Did you ever look and  
13 see the errors?

14 MR. EDMONDSON: I didn't review the log files  
15 until we were asked to provide them.

16 THE SPECIAL MASTER: So then --

17 MR. EDMONDSON: They were processed --

18 THE SPECIAL MASTER: Right, so you process  
19 it. Because that could be another possible  
20 contributing source to how we ended up with some  
21 issues, some issues with the production as well,  
22 because some of the errors look like there were  
23 partial copies made, and I couldn't tell -- Dean,  
24 maybe you can answer this.

25 If it fails on the copying, does it then just

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1 not make a copy?

2 MR. SCHAIBLEY: It attempts to recopy it  
3 three times, and if it fails after the third time, it  
4 moves on.

5 THE SPECIAL MASTER: And if it's a partial  
6 copy, it doesn't keep it?

7 MR. SCHAIBLEY: I believe that's correct.

8 THE SPECIAL MASTER: Can you just verify  
9 that? Because that's how I read it. Can you just  
10 double-check to make sure?

11 MR. SCHAIBLEY: Uh-huh.

12 THE SPECIAL MASTER: Okay. So then you got  
13 it. You got these evidence containers.

14 MR. SCHAIBLEY: Yes.

15 THE SPECIAL MASTER: We're going to redo the  
16 chain of custody so we know what was collected for  
17 each user.

18 Now, Dean, returning back to my question, I  
19 need you to also document on the chain of custody  
20 form, for the exact reason I was just discussing with  
21 John Espinoza, right, when I look at the scripts,  
22 there is no PST, no OST files in there, full stop.

23 So I'm not -- my job is to sort of get to the  
24 bottom of this and make sure that everything was  
25 properly collected and preserved.



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1 Help me understand. You ran the scripts,  
2 then you ran an additional independent process with  
3 each one of the 26 custodians, going to their  
4 mailboxes?

5 MR. SCHAIBLEY: Correct.

6 THE SPECIAL MASTER: Just to be clear, you  
7 would go to a mailbox, you would extract -- I don't  
8 know what version you had. Like, were you ExMerging  
9 or...

10 MR. SCHAIBLEY: No, it wasn't ExMerge. It  
11 was literally opening Outlook as the user. It pulls  
12 everything down from the mailbox exchange server into  
13 that Outlook session, go in and recover any deleted  
14 items in the deleted items folder, recovering deleted  
15 items in the inbox, and restore it into the mailbox,  
16 and then export as a PST the entire mailbox.

17 THE SPECIAL MASTER: Okay. Do you verify the  
18 mail once it's done? Once you finish that process, do  
19 you try to load those mail accounts?

20 MR. SCHAIBLEY: Yes, we do reload the PST to  
21 make sure that it will open.

22 THE SPECIAL MASTER: So then I'm a little --  
23 so then returning back to Mrs. Panzeri, if you were  
24 able to open it and he had to run a 1 point cutoff 9  
25 plus percent of the -- to repair it, either that needs

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1 to be redone or recopied?

2 MR. SCHAIBLEY: I'm not sure which PST is  
3 erring out. For example, I was --

4 THE SPECIAL MASTER: Why doesn't he provide  
5 you the error logs and then you guys work through  
6 specifically with Panzeri what the issue is.

7 MR. SCHAIBLEY: When we reload the PST, we're  
8 only reloading the one that we exported, which is the  
9 main mailbox.

10 With regard to like Ms. Panzeri, for example,  
11 users will archive their own e-mail into a PST file,  
12 and we don't go back and reload every single one of  
13 the PST files.

14 THE SPECIAL MASTER: Can we just double-check  
15 to work your way through it and make sure it's not  
16 connected in at least the work you did? I need you to  
17 add to the chain of custody forms for each of them, "I  
18 went to this custodian on these days and this is what  
19 I got," because I need to know what the active mail  
20 was that you got on that day versus the script  
21 running. And there's still within your script PST and  
22 OST files, and I think counsel wants to know the  
23 difference as well between what we collected  
24 physically on a specific day from these custodians  
25 versus what was collected from the server or the

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1 scripts, because there is a different value to the --  
2 necessarily just for understanding purposes. So I  
3 would like you to go back and amend that.

4 Does plaintiffs have any questions here?

5 MR. GODINO: No.

6 THE SPECIAL MASTER: Just so I understand,  
7 then, the chain of custody, the MD 5 hash values that  
8 were calculated or not calculated, can someone please  
9 go back and calculate the hash values so that we make  
10 sure the evidence items that we're looking at are all  
11 the same?

12 MS. WITTY: When you say the MD 5, you mean  
13 information taken from the secure server?

14 THE SPECIAL MASTER: Yes.

15 MS. WITTY: We have that, so we can verify  
16 that.

17 THE SPECIAL MASTER: Did you verify it?

18 MR. EDMONDSON: Yes, it verifies when it  
19 opens.

20 THE SPECIAL MASTER: I'll just point out,  
21 there's a -- how long is the hash? It's typed,  
22 though, right? It's electronic, and this is a Word  
23 document. So copy it and input it in, on the chain of  
24 custody.

25 MS. WITTY: Okay.

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1 THE SPECIAL MASTER: It says -- where is it?  
2 Under "identify details." It says "if item requires  
3 the storage device includes the MD 5 for the entire  
4 image required ^ EXBT."

5 Okay. So I'm going to -- now that we have  
6 sort of done the easy stuff, we'll get into the other  
7 stuff. I want to talk about verifying -- sorry.  
8 Strike that.

9 Counsel Foley, returning back to where I was  
10 discussing with you, I want to understand a couple of  
11 things for my own edification.

12 MS. FOLEY: Sure.

13 THE SPECIAL MASTER: There was another  
14 associate assigned to this case prior to this current  
15 one.

16 MS. FOLEY: Two, yes.

17 THE SPECIAL MASTER: Were custodian  
18 interviews ever done at any point in this litigation  
19 prior to now?

20 MS. FOLEY: Custodian interview being what is  
21 the inventory --

22 THE SPECIAL MASTER: Can you give me --  
23 (Inaudible due to multiple colloquy.)

24 MS. FOLEY: I know she did it, but I don't  
25 understand what the definition is.

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1 THE SPECIAL MASTER: Can you give me a copy  
2 of the custodian interview?

3 MS. WITTY: This includes all six custodians.

4 THE SPECIAL MASTER: And you saw my order?

5 MS. FOLEY: Yes, I did.

6 THE SPECIAL MASTER: In my order I attached a  
7 full custodian interview where it says, at the very  
8 beginning here, to locate and preserve all electronic  
9 and hard copy documents, including e-mail related to  
10 whatever action and the devices that are subject to  
11 the action. A more substantive interview may come  
12 later. Step B, explain attorney-client privilege,  
13 keep discussion confidential. Do not discuss case  
14 with others except attorneys. C, explain outline of  
15 case. D, explain preservation duty. F, explain  
16 upcoming preservation and acknowledgment form if that  
17 was what you used.

18 I'm talking about those things.

19 MS. FOLEY: Right.

20 THE SPECIAL MASTER: Was that ever done?

21 MS. FOLEY: I do not know.

22 THE SPECIAL MASTER: When I read over the  
23 transcripts of the Court that were provided to me,  
24 there was representations to the Court that there had  
25 been conversations with their IT individuals within

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1 UMC.

2 MS. FOLEY: Yes.

3 THE SPECIAL MASTER: So I was wondering, were  
4 there any -- is there any documentation of what was --  
5 I'm trying to figure out how we ended up with  
6 custodians that -- we ended up with custodian  
7 interviews finally in hand, hearing now, and I want to  
8 make sure that it didn't happen beforehand and it got  
9 lost in the shuffle of old counsel, new counsel,  
10 associates, and the like. So I'm just asking, were  
11 they ever done?

12 MS. FOLEY: I say -- I would have to say I  
13 don't think so, but I'm not sure.

14 THE SPECIAL MASTER: Do me a favor and go  
15 back and check, because it's actually fairly important  
16 from my perspective. I was appointed by the Court to  
17 make sure that everything is being properly preserved,  
18 and before I get into that I want to know if there is  
19 any other information I should be reviewing that you  
20 might have had through prior custodian interviews or  
21 conversations you had with IT, because it's important  
22 before I reach any -- or issue any ruling or  
23 recommendation that I fully understand what was  
24 actually done -- right -- before I reach that point.  
25 So if you would be so kind.

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1 MS. WITTY: In review of prior counsel's  
2 records, there is no indication that specific  
3 custodian interviews were done.

4 The profiles that were initially requested  
5 for preservation I believe were based upon the list  
6 that came from plaintiff's counsel, and the  
7 discussions, I believe, with regards to scope remain  
8 mainly with the prior technologist.

9 THE SPECIAL MASTER: All right. So  
10 plaintiffs, because they weren't there when it all  
11 sort of started and you were, did you ever have  
12 conversations with them about custodians? How did you  
13 come up with your list of custodians?

14 MR. TOSTRUD: We assembled a list of  
15 custodians initially through review of some documents,  
16 I believe some of their disclosures, and some  
17 interviews that we conducted with our plaintiffs.

18 THE SPECIAL MASTER: What I'm basically  
19 getting at is did you ever receive anything from them  
20 that might indicate -- usually when custodians are  
21 selected, each side goes off and interviews who they  
22 believe are the relevant parties, and sometimes when  
23 we have these custodial interviews, it turns out that,  
24 oh, no, this person doesn't really do anything related  
25 to what the dispute is about, and they should be

1 talking to this other person.

2 Were you ever made aware of any of that sort  
3 of happening, on the other side, and when you made  
4 your interview?

5 MR. TOSTRUD: No, I'm not aware of any  
6 custodian --

7 THE SPECIAL MASTER: Thank you. That's  
8 all --

9 MR. TOSTRUD: -- I just want to add also we  
10 took the deposition of Mr. Espinoza and we pulled some  
11 names from that deposition.

12 THE SPECIAL MASTER: Mr. Espinoza we are  
13 going to have a whole separate conversation about in a  
14 second.

15 MS. FOLEY: As far as I remember, the  
16 custodians were proposed by plaintiffs.

17 MR. TOSTRUD: That's accurate.

18 THE SPECIAL MASTER: I'm trying to understand  
19 if there was any effort by the defense to make sure  
20 that the custodians that were identified were the  
21 right people.

22 MR. TOSTRUD: There was not.

23 THE SPECIAL MASTER: Okay. So this takes me  
24 to one -- I'm going to go off the record and then back  
25 on the record.



1 (OFF RECORD.)

2 THE SPECIAL MASTER: Let's go back on the  
3 record.

4 Counsel for UMC iterated with me through  
5 these custodian interviews -- she was actually fairly  
6 patient and cooperative. I sent her back about -- a  
7 lot of questions -- I don't know the total number,  
8 many pages of questions about the custodian interviews  
9 that I wanted additional clarification.

10 I assume, when she offered to clean up the  
11 custodian interviews, she's going to merge everything  
12 that we've covered, and that includes specifically the  
13 issue around executive assistants and how are they  
14 used and in what capacity for the different executives  
15 to ensure that there isn't any additional issues  
16 there.

17 I will take -- did you have -- I just wanted  
18 to clarify what we just covered for the record  
19 purposes. We're going to add an additional custodian,  
20 because in the process of the custodian interview  
21 process, we identified Claudette Myers, who is John  
22 Espinoza's assistant, as a likely source of responsive  
23 and relevant information.

24 MR. TOSTRUD: May I approach, because we are  
25 in possession of a document that was produced by UMC,

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1 UMC Bates number 100004, which purports to come from  
2 Cindy Dwyer.

3 THE SPECIAL MASTER: Oh, I have lots of  
4 people I have questions --

5 MR. TOSTRUD: On behalf of Brian Brannman,  
6 one of our custodians.

7 THE SPECIAL MASTER: So what we've done -- so  
8 what I've done and requested is -- so let's run with  
9 that. Let me first finish up. We are going to table  
10 that for one second.

11 We are going to return to going through with  
12 counsel on the record who has executive assistants and  
13 what they were used for, and that I would expect to be  
14 immediately amended to the custodian interviews. And  
15 anybody in any way, shape or form that was acting in  
16 the capacity to send, represent, communicate,  
17 dialogue, however that we're talking about, that that  
18 will be preserved.

19 If the collection was not done, I want that  
20 identified to me immediately, and I would like it to,  
21 obviously, be done immediately. And obviously, the  
22 chain of custody paperwork that will be provided will  
23 reflect the work that was also done from Ms. Myers.  
24 So it will be like Ms. Myers collected her e-mail  
25 boxes, whatever was done.

1           So we will have for every executive  
2     assistant, that is, when you receive the custodian  
3     interviews it will be crystal-clear.

4           I'm simply talking about Claudette Myers,  
5     because -- but I fully expect and we covered,  
6     actually, I believe, Doug Spring, was it? We had a  
7     conversation -- he -- his use was -- of his executive  
8     assistant was limited. Was that --

9           MS. WITTY: He did not, actually --

10          THE SPECIAL MASTER: He didn't have one.  
11     They had a shared pool. I covered all this. You will  
12     see it when you get it and they'll clean it. I want  
13     to respect the attorney-client and work product and  
14     let them clean it up. They will give it to you.

15          If I believe it is insufficient in any shape  
16     or form, I will raise that and I will flag that for  
17     discussion, but I don't think I foresee any issue  
18     there. You can talk among yourselves. I just want to  
19     make sure you didn't want to --

20          MS. WITTY: We were just clarifying the need  
21     to include Ms. Dwyer's law firm, and the CEO,  
22     Brannman.

23          THE SPECIAL MASTER: I suspect, when you go  
24     back, for everybody that -- I try to be thorough, but  
25     thank you for pointing out -- what was the name,

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1 again, for the record?

2 MR. TOSTRUD: So this is an e-mail from Cindy

3 Dwyer --

4 THE SPECIAL MASTER: Let's just enter it.

5 Let's just put it on the record so we'll have it.

6 That way I know how to spell her name. Enter this as  
7 an exhibit, please.

8 (Exhibit 5 was marked

9 by the Certified Court Reporter.)

10 THE SPECIAL MASTER: Let the record reflect

11 that Exhibit 5 is an e-mail that's Bates stamped

12 UMC100004, and it is from Cindy Dwyer sent on behalf

13 of a Brian Brannman, which appears was his executive  
14 assistant, I believe.

15 MS. WITTY: Yes.

16 THE SPECIAL MASTER: Okay. Moving forward,  
17 returning back to what I was just saying, we will get  
18 the cleanup custodian interviews. In it we'll include  
19 that -- I would like you to also -- UMC provide said  
20 interviews to -- I apologize. I forgot your last  
21 name.

22 MR. SCHAIBLEY: Schaibley.

23 THE SPECIAL MASTER: Schaibley.

24 I would like counsel for UMC to provide the  
25 custodian interviews that are cleaned up to

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1 Mr. Schaibley to verify properly that everything was  
2 done with the chain-of-custody paperwork that will  
3 then be given to Joe and so on and so forth. Okay?

4 It's a rolling production we're going to  
5 cover before we leave here. Obviously we need to add  
6 Claudette Myers into that process for your timing  
7 considerations.

8 Now, let's talk about voice mail messages for  
9 a minute here. I don't know if it would be within  
10 your -- Mr. Schaibley, within your purview or you feel  
11 comfortable answering questions on that. If not, we  
12 can write them down --

13 MR. SCHAIBLEY: It would be better to write  
14 them down. I have nothing to do with the BlackBerry  
15 server.

16 THE SPECIAL MASTER: As with the voice mail,  
17 the Nortel -- not Nortel. I apologize. With...

18 MR. SCHAIBLEY: Avaya, the -- at work at UMC?

19 THE SPECIAL MASTER: Yes.

20 MR. SCHAIBLEY: Yeah, I don't have anything  
21 to do with that system either.

22 THE SPECIAL MASTER: I got a little confused.  
23 Counsel, I apologize in advance, but when I was  
24 reading over the discussion around the PBX system --

25 MS. WITTY: Yes.

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1 THE SPECIAL MASTER: -- I was, A, surprised  
2 that custodians knew what a PBX was. B --

3 MS. WITTY: Well, it's used in the title for  
4 the personnel that they work with. I don't know that  
5 they understood what PBX --

6 THE SPECIAL MASTER: For the record, in the  
7 custodian interviews they were referencing PBX  
8 systems. PBX, for the record, is a phone-routing  
9 system that's used to manage phone networks, usually  
10 for enterprises. Naturally, I was a little surprised  
11 when the custodian mentioned PBX and this and that.

12 And during the course of that I asked, if  
13 they -- because a PBX system and a unified messaging  
14 system are actually two different things, and I wanted  
15 to understand if the voice mail messages that people  
16 got left, A, could be e-mailed to them, B, were they  
17 stored on their server, and how did that actually  
18 work.

19 Can you please talk to someone within the  
20 organization that can figure out whether they back  
21 up -- so according to their backup policy, which is  
22 different than what was provided, they need to figure  
23 out which one is which.

24 MS. WITTY: They do have a separate  
25 communications recovery policy. I'm not sure that

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1 that was provided ahead of time. It was just actually  
2 released to counsel last night, and we can provide  
3 that as well to you.

4 THE SPECIAL MASTER: Please do.

5 MS. WITTY: To you and to plaintiffs.

6 THE SPECIAL MASTER: Because, obviously, the  
7 reason why I'm even mentioning this, it just goes to  
8 the collection; right? Like if they actually have a  
9 separate server where they have been storing the voice  
10 mail messages that are being e-mailed to people that  
11 relate to your key custodians, I'd like to have a  
12 conversation -- I'm fully not ordering or saying that  
13 it's necessary, because often voice mail message is a  
14 very costly experience for all parties involve.

15 But I would like to first understand do they  
16 have it and how does it actually work, because --  
17 yeah, and send me the policy, and then I'll figure it  
18 out, because their backup policy seems to suggest that  
19 it would be, and another might suggest otherwise. And  
20 then we'll go from there on the voice piece.

21 I want to then talk about when the collection  
22 was done, so let's talk about phones. Again, the  
23 work-product privilege I fully respect, but some of  
24 the information there around it I would like to  
25 disclose. Is there any objection to that?

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1 MS. WITTY: No.

2 THE SPECIAL MASTER: It would appear -- I  
3 forget -- identify the individual. Counsel, you know  
4 who I am referring to, where there was just -- what's  
5 the name of the individual, with the...

6 MS. WITTY: The one who mentions text  
7 messages and --

8 THE SPECIAL MASTER: Yes.

9 MS. WITTY: James Mumford.

10 THE SPECIAL MASTER: Yes.

11 So given the total number of messages that  
12 were collected against what Mr. Mumford indicated is  
13 ongoing, or was at the time, or -- I'm a little  
14 confused as to the disconnect. Any thoughts?

15 MS. WITTY: I'm not exactly sure. From the  
16 custodian interviews it's difficult to understand how  
17 much of them, how many of them actually use their  
18 texts for business purposes.

19 THE SPECIAL MASTER: Someone uses it to talk  
20 to their wife a lot.

21 MS. WITTY: Yes. And I actually -- I  
22 visually inspected the phones of Mr. Mumford and of  
23 Mr. Espinoza, the two custodians still with UMC that  
24 have UMC-issued BlackBerries. It's a very limited  
25 scope.



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1 THE SPECIAL MASTER: The issue is, the issue  
2 with the mobile device is that for, at least  
3 Mr. Espinoza, this is the same one he had at the time,  
4 and the way I read it, when there was an...

5 Mr. Schaibley, maybe you can clarify. You  
6 mentioned you weren't -- on the BlackBerry, an expert  
7 in.

8 So as I understand it, when a BlackBerry is  
9 pushed with a new image, it wipes the old one.

10 MS. WITTY: Yes.

11 THE SPECIAL MASTER: The way they have it set  
12 up. So, theoretically, everything that was there was  
13 wiped by Mr. Espinoza. No?

14 MS. WITTY: Yes.

15 THE SPECIAL MASTER: So that might explain  
16 why --

17 MS. WITTY: And further, something we've  
18 raised with plaintiffs, the upgrade between the  
19 Microsoft Exchange server 2003 --

20 THE SPECIAL MASTER: Oh, we're talking  
21 about --

22 MS. WITTY: -- to Exchange 10, there would  
23 have likely been an additional wipe --

24 THE SPECIAL MASTER: Of the phone or of the  
25 Black- --

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1 MS. WITTY: Of the server.

2 THE SPECIAL MASTER: Of the BlackBerry  
3 server?

4 MS. WITTY: Yes, as part of the --

5 THE SPECIAL MASTER: You need to get that  
6 BlackBerry server person front and center on the phone  
7 or here or available, because I have run BlackBerry  
8 servers on occasion, and I don't understand how --  
9 unless he was under no knowledge that this was  
10 relevant to be preserved, which is possible, I'm a  
11 little confused as to -- when you get the updated  
12 custodian interviews, I expect it to fully detail out  
13 that for Mr. John Espinoza, you know, it was updated  
14 twice on the following date.

15 MS. WITTY: Yes.

16 THE SPECIAL MASTER: And you'll get in detail  
17 those dates.

18 MR. TOSTRUD: Can I get the dates when they  
19 were...

20 THE SPECIAL MASTER: Well, there's a lot of  
21 them.

22 MR. TOSTRUD: Did he get a new BlackBerry?

23 MS. WITTY: No.

24 THE SPECIAL MASTER: This is -- off the  
25 record for one second.

1 (OFF RECORD.)

2 THE SPECIAL MASTER: Let's go back on the  
3 record.

4 I'm still struggling, based on the  
5 information that I've been given, to understand when  
6 you upgraded from 2003 to 2010, that impacted the  
7 BlackBerries, first question. I don't understand how  
8 when you are upgrading your exchange environment and  
9 you are not upgrading your BlackBerry server --

10 MR. SCHAIBLEY: The BlackBerry server was  
11 upgraded.

12 THE SPECIAL MASTER: So you need to talk to  
13 the BlackBerry server person, because I don't think  
14 that has anything to do with your exchange upgrade. I  
15 think it has to do with the BlackBerry Server upgrade  
16 much more than the exchange server upgrade.

17 My question about the upgrade to 2010, that  
18 was, did you upgrade your exchange servers?

19 MR. SCHAIBLEY: We did.

20 THE SPECIAL MASTER: Did you make a copy of  
21 the EDB?

22 MR. SCHAIBLEY: It's a brand-new environment.

23 THE SPECIAL MASTER: No, but I mean the old  
24 one.

25 MR. SCHAIBLEY: The old one is still sitting

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1     there.

2                 THE SPECIAL MASTER:   Yeah, I mean, IT is -- I  
3     mean, I've run data exchange environments.   You  
4     don't -- wait two years before you turn off that old  
5     exchange box.

6                 MR. SCHAIBLEY:   Correct.   It's still sitting  
7     there right now.

8                 THE SPECIAL MASTER:   At least.

9                 So we still have the old exchange  
10    environment.

11                So, Counsel, just turning back, for purposes  
12    of edification, the BlackBerry's shouldn't have been  
13    impacted by the Outlook upgrade.

14                More importantly, even if it were impacted,  
15    it doesn't matter because you guys have a full  
16    operational set of the old exchange environment, I  
17    assume, available.

18                So I need to figure out the BlackBerry piece,  
19    because obviously the scope of the collection included  
20    relevant messages or contemporaneous communications  
21    that related to whatever the dispute as the Court  
22    decided, which I was not involved with, but you guys  
23    have already had prior conversations with the Court  
24    around mobile devices, extensive conversations.   So...

25                MS. WITTY:   I think the confusion there --

1 and this is something that obviously is between the  
2 parties and counsel that was needed for  
3 clarification -- the request was made for the text  
4 messages, and so we went to the phones to image them  
5 for the text message purpose.

6 THE SPECIAL MASTER: Which is a great place  
7 to look if they didn't remotely wipe them.

8 The other place that people store text  
9 messages, on the BlackBerry servers.

10 MS. WITTY: At that time UMC was not  
11 retaining text messages on the servers.

12 THE SPECIAL MASTER: BlackBerry servers by --  
13 you need to talk to the BlackBerry server  
14 administrator, not the exchange server administrator.  
15 They are two totally different people with two totally  
16 different policies.

17 Luckily, according to their policy, they  
18 would have a backup. So you can pull it from the  
19 backup tape if necessary.

20 At some point in the last year, what -- I  
21 think -- my belief is -- well, if this backup is --  
22 the window backup and restore matrices is followed as  
23 set forth in what was provided as an exhibit in the  
24 additional -- as an Exhibit, 4, and the additional  
25 information was provided in the custodian interviews,

1 I'd have to believe that they make a backup of the  
2 BlackBerry environment daily, weekly, monthly, and  
3 then hold one tape a month for at least a year and  
4 then they hold the year for ten years usually, is how  
5 it works, standard. I'd like to -- so in worst-case  
6 scenario they'll have to load it up and pull it off.

7 But what I think, counsel for UMC, you just  
8 need to make sure that you are talking to the right  
9 person within the UMC technology department to make  
10 sure -- you need two people, actually. The BlackBerry  
11 people and the backup group.

12 And the backup group -- do they run CommVault  
13 as well? So CommVault is an enterprise backup  
14 solution. I've used it myself. Excellent. My  
15 personal preference, better than Symantec. Personal  
16 preference, though. CommVault Enterprise level backup  
17 has that capability to include the BlackBerry servers.

18 Let's go off the record.

19 (OFF RECORD.)

20 THE SPECIAL MASTER: Let's go back on the  
21 record. Two questions about Brian Brannman. When you  
22 ran his collection, did you run a script with it? You  
23 ran the script and then you personally made copies?

24 MR. SCHAIBLEY: Everybody was run the same,  
25 yes.

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1 THE SPECIAL MASTER: So then who is the  
2 J. Mumford? I've got to just correlate the name.  
3 That would be Mr. Mumford. Mr. Mumford had 25  
4 different mail containers.

5 MR. SCHAIBLEY: It would be more appropriate  
6 to say he had 25 different computer profiles.

7 THE SPECIAL MASTER: Well, that was my  
8 question. So that's why I need you to go back to the  
9 custodian and explain to me -- I need to understand  
10 specifically, because 25 different -- one thing that  
11 was mentioned by UMC, and, I think, counsel for UMC  
12 you should think about, is it might be that you have a  
13 whole lot of duplicative data.

14 MR. SCHAIBLEY: Yes, I would say that's very  
15 accurate.

16 THE SPECIAL MASTER: But I don't know that  
17 for a fact, because I don't actually know the -- I  
18 have no -- I only saw the filenames. But I have  
19 yet -- it's not that often you will have -- how many  
20 did I say now?

21 THE REPORTER: 25?

22 THE SPECIAL MASTER: Yeah, that someone will  
23 have 25 different mail containers, which leads me to  
24 my next point.

25 Which is, you need to figure out how much

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1 data is actually duplicative in the data collection  
2 you have, because it's either that or he loved e-mail.  
3 I mean, they are big files. These aren't small  
4 mailboxes either.

5 So my other question is, when you run the  
6 script, Yahoo mail and Gmail, I know there was a  
7 conversation in the custodian interviews where it was  
8 discussed, but do you have the actual text files, the  
9 script?

10 MR. SCHAIBLEY: Yes, I do.

11 THE SPECIAL MASTER: Okay. Can you look at  
12 J. Espinoza on page 26. Or, actually, wait. Look at  
13 B. Brannman on 77 or page 12 -- or yeah, page 77. And  
14 show that to counsel as well, and then I'm going to  
15 ask my question, but I think you might want to look at  
16 it really quickly. I can actually just show it to  
17 you.

18 MR. SCHAIBLEY: That would be quicker.

19 THE SPECIAL MASTER: I'm just showing it to  
20 him and then I'll present it to the parties, so they  
21 know it -- what I did is I ran -- let's go off the  
22 record.

23 (OFF RECORD.)

24 THE SPECIAL MASTER: Back on the record.

25 So I'm going to ask counsel for UMC to go



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1 through the scripts that were provided and identify  
2 personal e-mail addresses that might have been  
3 associated with each of the five custodians and verify  
4 with them that they did indeed not use this for  
5 purposes relating to this (inaudible) litigation.

6 (Cough noise.)

7 THE REPORTER: "Relating to"...

8 THE SPECIAL MASTER: This litigation.

9 And the reason I'm requesting you do this is  
10 because there was explicit questions in the custodian  
11 interview -- do you have a question?

12 MR. O'MARA: Can we get all of the custodian  
13 records, not just the five as you have expanded them?  
14 We've expanded it to six.

15 THE SPECIAL MASTER: Oh, six, but I haven't  
16 even seen -- yes, so for the six -- for Claudette,  
17 thank you very much. For the six, to look at them and  
18 just verify, because based on the custodian interview  
19 responses you got against the script that was run, it  
20 doesn't fully -- they might have forgotten because it  
21 was done so long ago.

22 I don't know how the scripts run. I don't  
23 know -- because I didn't actually get a chain of  
24 custody, I don't actually know -- it could be that  
25 they just sit at a terminal, they log into a terminal

1    wherever, and they are just using it to use their  
2    personal e-mail account just on that box or something.  
3    I just have no context.

4               So I need to get context and I need you to  
5    verify with them, because some of them said they  
6    didn't have any or they didn't use --

7               MS. WITTY: Right.

8               THE SPECIAL MASTER: -- personal e-mail, and  
9    it's clearly every single one of them had some sort of  
10   indicia of personal e-mail.

11              I don't need to know the personal e-mail.  
12   I'm saying they could have forgotten for whatever  
13   purposes. But it's important to make sure that the  
14   collection, if indeed they did use it at the time and  
15   they forgot, that you check.

16              MR. SCHAIBLEY: The only two that would have  
17   been able to get to any personal e-mail would have  
18   been Brian Brannman and John Espinoza.

19              Based on our policy, we actually do not allow  
20   access to Yahoo, Gmail, any Web-based e-mail through  
21   our processor.

22              THE SPECIAL MASTER: Let's go off the record.

23                               (OFF RECORD.)

24              THE SPECIAL MASTER: Back on the record and  
25   just reiterate the importance:

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1 I acknowledge to you, I understand and  
2 appreciate your policy. I would just strongly --  
3 rather than focusing on those two individuals, you  
4 apply it all to six for purposes of what I have just  
5 shown you as the reason to revisit it.

6 MR. TOSTRUD: Just for clarification's sake,  
7 are we talking about the use of personal e-mail for  
8 any work setting?

9 THE SPECIAL MASTER: Yes, that's it. The  
10 only purpose I'm having this conversation, in the  
11 custodian interview form, it says did you use personal  
12 e-mail at work.

13 Now, what most people say is no. Yes, I used  
14 personal e-mail at work, but it was for only personal  
15 things. Most people say, no, I've never used e-mail,  
16 and I never brought home a computer, and I never --  
17 you know. Most people say, yes, I did personal  
18 e-mail, but it was for my personal e-mail.

19 Now, when someone says no, that usually  
20 motivates me to -- I mean, as a human being, myself,  
21 my wife e-mails me, and I can promise you that while  
22 I'm at work or wherever I am in world, I will respond,  
23 because she is my wife and I will always respond.

24 So similarly, I would expect that, so I would  
25 encourage you to go back through and refresh them just

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1 to confirm. I'm not saying anything one way or the  
2 other. I'm just saying check because of that issue  
3 with -- and you'll see the custodian interviews when  
4 you get them and you'll understand.

5 MR. TOSTRUD: Okay.

6 MR. O'MARA: Is it just specific to work or  
7 specifically towards using their personal e-mail for  
8 any work-related aspects whether they are at their  
9 desk at work or if they are at their home e-mailing  
10 from their computer?

11 THE SPECIAL MASTER: Well, as I understand  
12 it, and I'll let Dean speak to this exact -- because  
13 he's in charge of networking security. But as I  
14 understand it, and Dean, correct me if I am wrong, the  
15 only way you can actually access e-mail for work is  
16 using TS Web something...

17 MR. SCHAIBLEY: TS Web or Web build through  
18 OWA ^ SPELLING.

19 THE SPECIAL MASTER: So there is a very  
20 limited way, and every custodian says we don't do it,  
21 it's too difficult. Literally I think every single  
22 one of them in the responses said we don't use that.

23 Which again I just want you to revisit and  
24 remind them, because if you run -- just as a heads-up,  
25 you can just run it against the script, you just look

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1 for Web mail, and you will see -- it speaks for  
2 itself.

3 I assume, Counsel, when you spoke with them,  
4 you asked them did you use personal e-mail for work  
5 related business as well; right?

6 MS. WITTY: Yes.

7 THE SPECIAL MASTER: So that's in the  
8 custodian interview when you get it, and it's  
9 crystal-clear.

10 Again returning back to the purpose, the  
11 whole purpose is just I want to make sure that on a  
12 going-forward basis we've got all the right  
13 information, and that includes from Counsel Foley  
14 looking at the prior custodian interviews -- because  
15 at some point in the transcript that was provided to  
16 me, there was representations that there have been  
17 multiple conversations with the IT Department, and I  
18 just wanted to check those to make sure I see what  
19 they may or may not have said.

20 Oh, perfect, collection. I have several more  
21 questions for you. As to the collection effort, is  
22 there any reason why you didn't pull from the exchange  
23 environment? Just for my own edification.

24 MR. SCHABLEY: Just the way that our -- the  
25 way our investigation process has always run when I

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1 got there and was trained on doing these  
2 investigations is how I was trained to do it, was just  
3 to do a back-end, pull the mailbox and create a PST.

4 THE SPECIAL MASTER: But you are not pulling  
5 from the exchange environment? You are not exporting  
6 or ex-merging it?

7 MR. SCHAIBLEY: Correct.

8 THE SPECIAL MASTER: And you are going to  
9 resolve the failure points? Counsel will be paying  
10 close attention and look at the failure files which  
11 are identified in the script that you ran?

12 MS. WITTY: Yes.

13 THE SPECIAL MASTER: Question about the  
14 deleted e-mail issue, which ties to how the evidence  
15 that was received -- question? Was there a question?

16 MR. GODINO: No.

17 THE SPECIAL MASTER: So one of the error  
18 issues we were having was that there were -- that  
19 Mr. Edmondson and Mr. Pixley -- are you on the phone,  
20 Mr. Pixley?

21 MR. PIXLEY: Yes, I am here.

22 THE SPECIAL MASTER: Okay. I have a question  
23 for you specifically because it relates directly to  
24 your declaration that you provided.

25 One of the issues we had had to do with the

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1 fact that there were deleted recovered e-mails. Is  
2 that right? Is that correct?

3 MR. EDMONDSON: Yes, I believe. Well, there  
4 were e-mails that had to be recovered within the PST  
5 files during mounting.

6 THE SPECIAL MASTER: So I'm trying to  
7 understand -- is that accurate, Mr. Pixley? Is that  
8 what you said was one of the possibilities in your  
9 declaration you provided?

10 MR. PIXLEY: Yes.

11 THE SPECIAL MASTER: So I want to understand  
12 from a collections standpoint when it was done. If  
13 you are collecting active mailboxes, why would there  
14 be the need to do what was just said?

15 MR. EDMONDSON: Some of the PSTs during the  
16 mail process did identify additional deleted e-mails  
17 as it was opening it and mounting the PST file itself.  
18 So there were some that weren't recovered prior to the  
19 PST being provided.

20 MR. SCHAIBLEY: I don't know.

21 THE SPECIAL MASTER: I'm not saying -- I  
22 mean -- okay.

23 MR. EDMONDSON: There were PSTs provided that  
24 came from the home share, PSTs from the copying.

25 THE SPECIAL MASTER: If they were -- I

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1 mean -- any idea?

2 MR. SCHAIBLEY: The only e-mail where we go  
3 in and do -- recover deleted items, we only do that  
4 when we're going into the active mailboxes. Any other  
5 PSTs we don't even attempt to look at or recover any  
6 deleted from any other cases other than the active  
7 mailbox we go to.

8 THE SPECIAL MASTER: That makes a ton of  
9 sense. So what do you think?

10 MS. FOLEY: I'm not sure what the question  
11 is.

12 MR. EDMONDSON: I'm not sure what the  
13 question is either.

14 THE SPECIAL MASTER: My question is, how is  
15 it possible that you are loading the mailbox, mail  
16 files, PST, OST files into mail if theoretically there  
17 are hard copies; right? If you scan and repair them,  
18 that's one thing. It's totally different thing to  
19 load it and then have to recover deleted fragmented  
20 e-mails from an archive.

21 MR. EDMONDSON: I don't know why. I know  
22 that they did recover some.

23 THE SPECIAL MASTER: I get that. Is that  
24 normal? Does happen a lot to you?

25 Mr. Pixley, can you hear this?



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1 MR. PIXLEY: Yes.

2 THE SPECIAL MASTER: I want to hear your  
3 thoughts on it.

4 MR. EDMONDSON: I wouldn't say it's  
5 un-normal. There is usually some deleted e-mail on  
6 any PST. That's why I always recover it.

7 THE SPECIAL MASTER: I get the recover part,  
8 but I'm talking about the fragment. If you can't  
9 recover it, fine, but I mean, his script ran and he  
10 only copied an archived OST, PST. He wasn't  
11 recovering deleted files. He only searches active  
12 files.

13 What I'm saying is that -- correct me if I'm  
14 wrong, but your script only collects valid active  
15 files.

16 MR. SCHAIBLEY: Correct. The Robocopy  
17 script, it copies what's there.

18 The only thing I could say to that is if a  
19 PST this was in, for example, a home folder, that is a  
20 PST that the individual user created on their own.  
21 If, for example, they were actively in their mailbox  
22 and had that PST loaded --

23 THE SPECIAL MASTER: I get it, the machine  
24 shut off or whatever.

25 MR. SCHAIBLEY: -- that would be a

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1 possibility.

2 THE SPECIAL MASTER: Okay. This is why the  
3 chain of custody is so important, because when I saw  
4 the home, whatever, etc., I interpreted it as  
5 something else. I interpreted it as being not their  
6 own personal backup, but their OST and PST files.

7 Mr. Pixley, do you have any idea or wish to  
8 speculate?

9 MR. PIXLEY: On the recovery of deleted  
10 e-mail messages?

11 THE SPECIAL MASTER: From an active valid  
12 file.

13 MR. PIXLEY: My only thought, if we're  
14 talking about PST files, is, if these people had  
15 created archived PST files and then deleted messages  
16 from within those PST files, then I could see the  
17 recovery part.

18 THE SPECIAL MASTER: Yes, but as fragments or  
19 as a whole message in the active file?

20 MR. PIXLEY: You could certainly pick up  
21 entire messages, but I've also seen during that  
22 recovery process where, as long as it can still find a  
23 pointer, it will recover it, but what it's actually  
24 pointing to is largely just a fragment that still  
25 happens to be left.

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1 THE SPECIAL MASTER: Right. I get that part.  
2 I guess the part -- if the user created them -- never  
3 mind. The user created them. Ignore me. I get it.  
4 Never mind.

5 I'm just trying to figure out to make sure we  
6 don't have any production issues when we have this  
7 rolling production and if it's the user created it, we  
8 should be fine. If it's not user-created and it's  
9 from the actual mailboxes itself, it could be --  
10 that's where I get a little unclear.

11 So we'll see how it goes. So we'll table  
12 that for now and go forward, unless -- Mr. Pixley, do  
13 you have anything -- were you here for the beginning  
14 part, Mr. Pixley, where we established that EnCase 7  
15 fixes the problems with Paraban?

16 MR. PIXLEY: Yes.

17 THE SPECIAL MASTER: Do you have anything you  
18 would like to comment, Mr. Pixley, on that?

19 MR. PIXLEY: No.

20 THE SPECIAL MASTER: One other question:  
21 Kronos and SAP, and then we can move forward from the  
22 collection people.

23 Your script ran and collected SAP client  
24 files?

25 MR. SCHAIBLEY: Whatever was on a local

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1 machine.

2 THE SPECIAL MASTER: Every single one of  
3 them, I believe, had an SAP directory folder. I just  
4 want to understand: Is SAP data -- you are not  
5 pulling from the server. You are just pulling the  
6 client files?

7 MR. SCHAIBLEY: Correct.

8 THE SPECIAL MASTER: So the data still sits  
9 on the server side? Within your org- -- I don't  
10 understand how it's actually connecting to the SAP.

11 MS. WITTY: That's the problem. It's not  
12 actually something that is --

13 MR. SCHAIBLEY: It's not on our SAP system.

14 MS. WITTY: It's connected to the larger  
15 accounting --

16 THE SPECIAL MASTER: That would be why it's  
17 on everybody's computer.

18 When we went through it all, there was a  
19 question about SAP and Kronos, and on every -- when  
20 you ran the script, every computer, actually, it  
21 appeared had an SAP client on it, but no data, and I  
22 was a little confused. I want to make sure that the  
23 collection was done properly and that if -- you  
24 don't -- UMC doesn't actually control the SAP server;  
25 right?

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1 MR. EDMONDSON: Correct.

2 THE SPECIAL MASTER: My concern was they  
3 controlled the SAP server itself and that they hadn't  
4 actually preserved -- oh, I don't even know what it's  
5 used for, but if it may have responsive information,  
6 that that information been properly preserved, but  
7 it's not within your custody or control, which would  
8 make sense, because everybody had the exact same file  
9 structure.

10 Plaintiff have any questions there?

11 MR. TOSTRUD: I'd just like to understand  
12 that a little bit better.

13 THE SPECIAL MASTER: So on every -- when he  
14 runs the script, right, the script basically goes  
15 through and makes a copy of every profile for every  
16 device --

17 MR. SCHAIBLEY: The Robocopy script is a  
18 Microsoft product, and it goes through and will copy  
19 whatever source folder you tell it to.

20 In this instance we identified every computer  
21 within our environment that each custodian had a local  
22 profile on and we copied their local profile.  
23 Everything in the profile --

24 THE SPECIAL MASTER: Which included an SAP  
25 client, and it wasn't clear to me why when we asked

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1 the question, nobody was like I use SAP. And so I  
2 wanted to double-check today during the hearing to  
3 understand why did everybody have this but nobody  
4 actually was using it.

5 MR. TOSTRUD: Thank you.

6 MS. WITTY: We can clarify further with  
7 plaintiff's counsel with regards to what the content  
8 and why the client for SAP was used. It's essentially  
9 the county interface for tracking personnel  
10 information, which has all been provided with the  
11 opt-in packets.

12 THE SPECIAL MASTER: Do you require further  
13 information around the SAP?

14 MR. TOSTRUD: Not at this time. Thanks.

15 THE SPECIAL MASTER: Just one of those things  
16 I saw on everybody's profile and I was like, nobody  
17 uses it, huh.

18 Now, let's talk about -- are you the exchange  
19 administrator.

20 MR. SCHAIBLEY: Yes.

21 THE SPECIAL MASTER: You are going to wear a  
22 lot of hats.

23 Your policy, what is the current policy,  
24 standing policy around your exchange environment?

25 MR. SCHAIBLEY: What do you mean?

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1 THE SPECIAL MASTER: When you -- how long do  
2 you keep -- so starting from -- I'll run through three  
3 or four scenarios.

4 I'm a user and plaintiff if you want to add a  
5 scenario, feel free.

6 I'm a user, and I delete an e-mail, but  
7 usually in an exchange environment that e-mail will  
8 exist on the exchange server for X. Period of time.

9 MR. SCHAIBLEY: 14 days.

10 THE SPECIAL MASTER: And then is it purged  
11 out?

12 MR. SCHAIBLEY: Yes.

13 THE SPECIAL MASTER: But it's captured by  
14 your backup tapes?

15 MR. SCHAIBLEY: Yes.

16 THE SPECIAL MASTER: So you have an annual  
17 backup of your exchange environment?

18 MR. SCHAIBLEY: The backup is done by a  
19 separate individual.

20 THE SPECIAL MASTER: Can you confer with that  
21 individual to see if they actually have a snapshot or  
22 how far back they have a backup tape?

23 MR. SCHAIBLEY: I can find that out.

24 THE SPECIAL MASTER: For the exchange  
25 environment?

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1 MR. SCHAIBLEY: Yes.

2 THE SPECIAL MASTER: Because the policy that  
3 was admitted into evidence doesn't -- it states  
4 that -- exchange is a window-based server?

5 MR. SCHAIBLEY: Yes.

6 THE SPECIAL MASTER: So you have full weekly  
7 backups, full monthly backups, and incremental daily  
8 backups, and it doesn't -- and it says for three  
9 cycles for you keep them, but it doesn't say if you  
10 recycle them or if you pull them out or -- and then it  
11 says [RPTR NOTE: looking at an exhibit] I just want  
12 to understand because the gentleman that was here last  
13 time, what was his name at the time.

14 MS. WITTY: Ernie McKinley.

15 THE SPECIAL MASTER: He was kind enough to  
16 tell us they kept it for several months. I would  
17 really like to talk to the back-up person and ask do  
18 you have a backup snapshot.

19 For disaster recovery, don't you have a  
20 snapshot at some point going back?

21 MR. SCHAIBLEY: I don't know what it is they  
22 have. We have to speak to that individual.

23 THE SPECIAL MASTER: Okay. All right.  
24 Because obviously if there are additional executive  
25 assistants that we couldn't -- that we're not properly



1 collected from, we'll need to collect from them, and  
2 we have to figure out where that may be.

3 So I said a couple of scenarios. That was my  
4 first scenario. Second scenario I have with you is  
5 I'm running my exchange environment. I make a backup  
6 much my own mailbox. Do I have the ability to write  
7 it to my C drive directly.

8 MR. SCHAIBLEY: At this time, yes, and that  
9 is the reason we collect during our script running all  
10 the mobile profiles because it will go to the local  
11 profiles. You don't have it to the top-level C drive,  
12 but desktop or the default folder under your profile.

13 THE SPECIAL MASTER: So can you tell me how  
14 that works so I understand? What we're talking about  
15 now, Counsel, so you understand, is that when this  
16 script runs, every -- a user gets a profile, and --  
17 but if you think about a hard drive, it's actually --  
18 a C drive will be an entire hard drive and that's what  
19 we will call the big, big, big, all the data. A local  
20 profile is usually some segment of that hard drive at  
21 that time. Does that make sense?

22 MR. GODINO: Yes.

23 THE SPECIAL MASTER: So what I want to  
24 understand is, was it possible at that time for users  
25 to back -- create a local backup copy outside of their

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1 profile to the C drive.

2 MR. SCHAIBLEY: No.

3 THE SPECIAL MASTER: Do you understand what  
4 that question is, Counsel.

5 MR. TOSTRUD: Uh-huh.

6 THE SPECIAL MASTER: So, then, can I -- is it  
7 IMAP, Pop, SMTP has --

8 MR. SCHAIBLEY: SMTP.

9 THE SPECIAL MASTER: Is it IMAP or Pop?.

10 MR. SCHAIBLEY: IMAP.

11 THE SPECIAL MASTER: So it's possible for  
12 someone to use an iPhone to configure them out? I  
13 mean, iPad, iPhone, I do it on both, so I mean...

14 MR. SCHAIBLEY: It was enabled at one point  
15 in time in the past and for a specific user's use. It  
16 is against policy.

17 THE SPECIAL MASTER: Do you know which users?

18 MR. SCHAIBLEY: There were a total of, I  
19 believe -- at the time, when the initial collection  
20 was run, 86, that were utilizing the personal phone.

21 THE SPECIAL MASTER: So because when I looked  
22 through the script, it kind of looked -- I understand  
23 it, since you're on I map -- did you tell counsel who  
24 those six individuals were for the mobile purposes?

25 MR. SCHAIBLEY: The 86 that were previously

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1 using it?

2 THE SPECIAL MASTER: Yeah, yeah.

3 MR. SCHAIBLEY: I don't believe we did, no.

4 THE SPECIAL MASTER: Counsel, you need to  
5 have a conversation with them and figure what the  
6 overlap is with the 26, for the obvious reason that if  
7 they specifically turned it on so that they could use  
8 IMAP protocol on their iPhone, that probably that  
9 would mean that they were using their iPhone to do  
10 work during that time. Maybe not. As the custodian  
11 interviews seem to indicate, there is a very strong  
12 culture there of enjoying your weekends and time off.

13 So I would encourage you, though, to make  
14 that inquiry.

15 Does counsel understand what I'm conveying  
16 here?

17 MR. TOSTRUD: I believe so.

18 THE SPECIAL MASTER: Do you have any  
19 questions?

20 MR. TOSTRUD: Not at this point.

21 THE SPECIAL MASTER: So then returning back  
22 to my scenario, I could have an iPad or an iPhone  
23 with my iMac configured and I can use it to do -- but  
24 I have to get permission, right? When I used to run  
25 an IT department or whatever, it was a frustrating

1 experience to occasionally have certain executives  
2 that would take it upon themselves to come in and say  
3 I must use my device and whatever.

4 And I would have to carve out a specific  
5 policy to allow them to use it. It wasn't like  
6 anybody could just turn it on and make it work. It's  
7 the same as UMC?

8 MR. SCHAIBLEY: At this time at that time;  
9 that is correct. But at that time it was all or  
10 nothing. And that's the policy I inherited. Anybody  
11 can go up to Google and how do I sync my iPhone.

12 THE SPECIAL MASTER: Then they could sync  
13 their UMC iPhone?

14 MR. SCHAIBLEY: Correct. The way the policy  
15 was set up it was all or nothing. Everybody is able  
16 to do it if they discover how or no one can do it.

17 THE SPECIAL MASTER: Off the record for one  
18 second.

19 (OFF RECORD.)

20 THE SPECIAL MASTER: Back on the record. I'm  
21 going to ask UMC's counsel to add an additional search  
22 term called iPhone and I want any or iPad and the  
23 signature lines for the e-mails anywhere it hits I  
24 want them to locate those e-mails, I want them to then  
25 go talk to the custodians and clarify why that

1 directly contradicts what they told us in their  
2 custodian interviews if that happened.

3 Off the record.

4 (OFF RECORD.)

5 THE SPECIAL MASTER: Back on the record.

6 Okay. Returning back to the scenario we were just in,  
7 I'm Mr. Brannman's executive assistant. I configure  
8 my iPhone or iPad to send messages at the time, not  
9 today, but at the time, since it was an all-or-none  
10 policy, and if I could go to Google how to configure  
11 my iPhone to send e-mail using an IMAP environment or  
12 just how to configure my iPhone to send mail.

13 They could theoretically make that work.

14 MR. SCHAIBLEY: The only way to make that  
15 work is if you had the actual password for the user.

16 THE SPECIAL MASTER: Right. We can pick a  
17 user, right? Forget the executive assistant. Just  
18 say Doug, Mr. Springer -- Mr. Spring had -- because I  
19 believe an I device of some type.

20 So it would be possible at the time for him  
21 to configure his phone, iPhone to do UMC-related work?

22 MR. SCHAIBLEY: Yes.

23 THE SPECIAL MASTER: Did you use exchange  
24 messaging services?

25 MR. SCHAIBLEY: No.

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1 THE SPECIAL MASTER: Did you use any other  
2 third-party messaging services?

3 MR. SCHAIBLEY: No.

4 THE SPECIAL MASTER: Do you allow Dropbox as  
5 a third-party storage services?

6 MR. SCHAIBLEY: No.

7 THE SPECIAL MASTER: Do you monitor it?

8 MR. SCHAIBLEY: Yes.

9 THE SPECIAL MASTER: Let's return back to the  
10 BlackBerry server. How is the exchange set to sync to  
11 the BlackBerry? How does it work? Is it push or is  
12 pull? How does it work?

13 MR. SCHAIBLEY: I believe that the BlackBerry  
14 is pulling.

15 THE SPECIAL MASTER: So when the initial  
16 custodians were collected from, there were nobody  
17 actually -- can we go off the record for a second.

18 (OFF RECORD.)

19 THE SPECIAL MASTER: Let's go back on the  
20 record.

21 Okay. So here's the scenario. I'm a user.  
22 I write an e-mail on my BlackBerry and my iPhone but  
23 the might be different because I don't know -- let's  
24 start with the iPhone. I'm write an e-mail message on  
25 my iPhone. I send that message to my colleague within

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1 the UMC organization discussing something relating to  
2 this litigation.

3 I then go to my computer at work and sit down  
4 at my computer at work. That e-mail doesn't show up  
5 in the sent folder?

6 MR. SCHAIBLEY: No.

7 THE SPECIAL MASTER: The only place that  
8 e-mail actually sits is where?

9 MR. SCHAIBLEY: It was sit on the recipient  
10 and it would sit on the device itself.

11 THE SPECIAL MASTER: So it's on the mobile  
12 device and on the recipient's device?

13 MR. SCHAIBLEY: No, the recipient's mailbox.

14 THE SPECIAL MASTER: Thank you. So then --  
15 okay. So if the recipient deleted that e-mail message  
16 from their mailbox, the only place that e-mail exists  
17 would be on the phone?

18 MR. SCHAIBLEY: It would still exist on the  
19 server as well until it's purged.

20 THE SPECIAL MASTER: Which is 14 days later?

21 MR. SCHAIBLEY: Correct.

22 THE SPECIAL MASTER: So now today it wouldn't  
23 exist anywhere but that device?

24 MR. SCHAIBLEY: Correct.

25 THE SPECIAL MASTER: Did anybody from the UMC

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1 internal legal team or HR talk with you about all of  
2 this, about how this works?

3 MR. SCHAIBLEY: No.

4 THE SPECIAL MASTER: Can we go off the  
5 record.

6 (OFF RECORD.)

7 THE SPECIAL MASTER: Let's go back on the  
8 record.

9 So, then, Counsel, this takes me to my  
10 current concern, which is the possibility that the  
11 only place that e-mails that were sent by key  
12 custodians, if you run the iPhone iPad search and you  
13 hit on one of those custodians, you are going to have  
14 to image their devices immediately because the only  
15 place that e-mail would sit today now if it doesn't  
16 show up anywhere else is on that device. Does that  
17 make sense?

18 MS. WITTY: Yes.

19 MR. GODINO: That is assuming it wasn't  
20 deleted on that device.

21 THE SPECIAL MASTER: If it was deleted from  
22 the device and deleted from the mail account -- but  
23 the trick is, when he ran his script, he made a copy  
24 of their sent box and their mailbox at the time. So  
25 what I'm saying is that if -- they might have



1 deleted -- so if you think of it like this.

2 We have a copy today of everything that was  
3 actually in that person's mail environment on that  
4 day, right, in their sent folder, trash and etc.

5 The only time this becomes an issue is isn't  
6 the situation you are saying, but if it's if we search  
7 and we find out A they were using the iPhone or iPad  
8 mobile device and that then you would have to go and  
9 look at that device, because the only place today that  
10 possible that information would exist would be, we  
11 don't know what they have on their device, but you  
12 have to assume that whatever they captured they  
13 captured accordingly, but if they deleted it from  
14 theirs, rights, and they deleted it from here, yes,  
15 nobody is going to know, but they have a copy of what  
16 was in there at that day at that time so the only real  
17 issue is if there are other messages on that device  
18 that weren't captured in that time span on the iPhone  
19 or iPad. Does that make sense? Because they have  
20 everything that was there then, so it's a matter of  
21 whether it was before or after.

22 But to keep it efficient just search for  
23 iPhone and iPad and if it shows up in the signature  
24 line, there is a reason to look. Every one of the  
25 custodians were asked the explicit question do they

1 use these devices for personal, for work related use,  
2 and they disavowed it some multiple times.

3 So I have no reason to think that it's  
4 otherwise, I just want to double-check, because it is  
5 possible they forgot, it's possible that they -- you  
6 know, lots of things have happened since that point,  
7 so you just run the search and if it comes up clean,  
8 which is what we would expect it to do, it shouldn't  
9 be an issue. This is just making sure that we got it  
10 properly.

11 Did I get Claudette's custodian interview?

12 MS. WITTY: Yes.

13 THE SPECIAL MASTER: I did.

14 MS. WITTY: I believe it's the last one  
15 before the supplements.

16 THE SPECIAL MASTER: I'll check it over in a  
17 few minutes.

18 I have a question about personal laptops and  
19 devices. How does that work, because I'm a little  
20 confused as to how that actually operates because some  
21 of the custodians indicated --

22 MS. WITTY: The only custodian that actually  
23 has an UMC issued laptop to them is Doug Spring. It  
24 was issued to him prior to the SC I U negotiations in  
25 2009 which occurred prior to the relevant time period

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1 for this. He hasn't used it since then. The device  
2 is still with UMC. It can be searched. It wasn't  
3 because the use of that machine fell outside of the  
4 relevant time period.

5 MR. TOSTRUD: This is news to us. When was  
6 it issued to him?

7 MS. WITTY: It was issued to him in late  
8 2008. It was used up until June of 2009. So it was  
9 regarding the SEIU negotiations prior to the relevant  
10 time period.

11 MR. TOSTRUD: Plaintiffs would request that  
12 that device be searched because defendant has relied  
13 extensively in its defense on a collective bargaining  
14 agreement. They rely on that defense throughout their  
15 interrogatory responses and their RFP responses. They  
16 brought a motion to dismiss on the basis of that  
17 ^ SPELLING, and we clearly think that's relevant.

18 THE SPECIAL MASTER: I'm going to reserve and  
19 read the briefing a little more before I make any  
20 ruling there, but I'm going to assume that you will  
21 continue to preserve it.

22 MS. WITTY: I will make sure --

23 THE SPECIAL MASTER: In a forensically sound  
24 manner. That's a lot of information.

25 MR. TOSTRUD: We're happy to provide

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1 information on --

2 THE SPECIAL MASTER: You guys are taking --  
3 your notes from last time are extremely useful. So if  
4 you want to write that down for us to stay on top of.

5 MR. TOSTRUD: You bet.

6 THE SPECIAL MASTER: Super helpful.

7 Turning back to personal laptops and the  
8 secure policies. They reference -- is there any  
9 list -- do you track who has tablets and laptops  
10 connecting into the OST laptop.

11 MR. SCHAIBLEY: No personal laptops connects  
12 to the network or tablets. Only UMC issued and  
13 observed devices connected to the network.

14 THE SPECIAL MASTER: So no MDM.

15 MR. SCHAIBLEY: Not at this time. We're  
16 looking at bringing one in in the future. As far as  
17 with our new 2010 exchange environment, personal  
18 cellphones are starting to be able to brought in and  
19 we control that through multiple policies.

20 THE SPECIAL MASTER: But at the time of the  
21 time period at issue that wasn't available?

22 MR. SCHAIBLEY: Correct.

23 THE SPECIAL MASTER: Have we figured out if  
24 any of the -- when I looked at the mobile devices,  
25 only three out of the five custodians actually had

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1     them.

2                 MS. WITTY:    Yes.

3                 THE SPECIAL MASTER:   That were UMC issued.

4                 MS. WITTY:    Yes.

5                 THE SPECIAL MASTER:   At the time were you  
6     able to track if a mobile device was connecting to UMC  
7     systems?   So if I wanted to bring in my BlackBerry and  
8     I didn't want to tell UMC that I have my own  
9     BlackBerry 10 to whatever, would it be possible for me  
10    to actually access that system?

11                MR. SCHAIBLEY:   No.

12                THE SPECIAL MASTER:   Except for e-mail?  
13    Because I could set up e-mail.

14                MR. SCHAIBLEY:   Correct.

15                THE SPECIAL MASTER:   Do you have any  
16    enterprise architecture diagrams?

17                MR. SCHAIBLEY:   I do not with regard to the  
18    enterprise as a whole.   Each team will maintain their  
19    own basic, the server team, the network team, etc.

20                THE SPECIAL MASTER:   The desktop team as  
21    well?

22                MR. SCHAIBLEY:   I don't know if the desktop  
23    team maintains any diagram.

24                THE SPECIAL MASTER:   Because where I get a  
25    little confused, when I look at the script that was

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1 collected, there is a whole bunch of WordPerfect  
2 documents. Again, I can't see the content, so I don't  
3 actually know. But when I read the custodian  
4 interviews, they're like -- (inaudible) WordPerfect.

5 THE REPORTER:... "WordPerfect"?

6 THE SPECIAL MASTER: WordPerfect.

7 MR. SCHAIBLEY: Our desktops are extremely  
8 old. I don't know how often they are swapped out and  
9 re-imaged.

10 THE SPECIAL MASTER: When you run your  
11 searching you are looking the Word document types?  
12 When you are searching and running search terms.

13 MR. EDMONDSON: Sent case 6 and 7.

14 THE SPECIAL MASTER: List of file types.

15 MR. EDMONDSON: We can double-check --

16 THE SPECIAL MASTER: Just making sure because  
17 I haven't seen a version for a while. Off the record.

18 (OFF RECORD.)

19 THE SPECIAL MASTER: Let's go back on the  
20 record. I want to talk about e-mail list servers? Do  
21 you manage them?

22 MR. SCHAIBLEY: E-mail list servers.

23 THE SPECIAL MASTER: Counsel for UMC,  
24 multiple custodians indicate they use mail lists.

25 MR. SCHAIBLEY: Oh, distribution lists?

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1 THE SPECIAL MASTER: No -- yes, I know the  
2 difference, but --

3 MS. WITTY: My technical misunderstanding.

4 THE SPECIAL MASTER: There was software that  
5 you identified that they -- they reference mailing  
6 lists.

7 MR. SCHAIBLEY: Those are distribution lists  
8 within the exchange environment.

9 THE SPECIAL MASTER: Did you pull those?

10 MR. SCHAIBLEY: When the initial request came  
11 in for the initial 26.

12 THE SPECIAL MASTER: Mailing lists, I want to  
13 cover. In the custodian interviews they mention  
14 mailing list. Do you have any mailing list software  
15 to the best of your knowledge?

16 MR. SCHAIBLEY: I do not. When a user refers  
17 to a mailing list, they are referring to a  
18 distribution group that we maintain on the exchange  
19 server.

20 THE SPECIAL MASTER: So UMC post --

21 MR. SCHAIBLEY: UMC post is dynamic  
22 distribution group on the exchange server that  
23 includes everyone with a mailbox in the environment.

24 THE SPECIAL MASTER: And it was something  
25 people could have been using to communicate?

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1 MR. SCHAIBLEY: The list that we maintain  
2 that only a small list of users are able to send to  
3 UMC posts.

4 THE SPECIAL MASTER: Let me tell you -- can I  
5 reference the custodian interviews? Are you okay,  
6 Counsel?

7 MS. WITTY: Uh-huh.

8 THE SPECIAL MASTER: Mr. Spring was one of  
9 those individuals. So when you did Mr. Spring's  
10 collection, did that include the mailing lists.

11 MR. SCHAIBLEY: It included whatever was in  
12 his mailbox. If he sent an e-mail to UMC post, it  
13 would have been saved in his sent values.

14 THE SPECIAL MASTER: But you never took a  
15 copy of UMC post.

16 MR. SCHAIBLEY: There is no way to take a  
17 copy of it.

18 THE SPECIAL MASTER: They are saying there  
19 are multiple mailing lists.

20 MR. SCHAIBLEY: There were two or three other  
21 distribution groups that were referenced in the  
22 original --

23 THE SPECIAL MASTER: Patient service leaders,  
24 mountain service group, and it was told to me that  
25 they have been fully preserved and they are referenced



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1 as lists.

2 MR. SCHAIBLEY: When the request came in, I  
3 responded to --

4 THE SPECIAL MASTER: I'll show it to you.

5 MS. WITTY: That may be a clarification that  
6 I could make because we actually just discussed this  
7 yesterday.

8 It was included on the initial list for  
9 preservation, and I was informed by Mr. Schaibley's  
10 supervisor that everyone on that list -- everything on  
11 that list had been preserved. After speaking to  
12 Mr. Schaibley he explained because those are  
13 distribution list, not a repository.

14 THE SPECIAL MASTER: Let me understand from  
15 my perspective. Based on when the litigation started,  
16 this has to do with people's working schedule and  
17 whatever and related details therein that we're here  
18 to talk about the discovery.

19 I would assume that there had been --  
20 someone's phone is on still.

21 For my own edification, you get a  
22 litigation -- I'm just trying to understand because  
23 the way they describe these, the custodians describe  
24 these mailing lists, which they are not actually  
25 mailing lists. They were using them to have

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1 communications with large groups of individuals within  
2 the organization.

3 MR. SCHAIBLEY: Yes.

4 THE SPECIAL MASTER: And they are all dynamic  
5 lists, or how does that --

6 MR. SCHAIBLEY: No. UMC host is the only  
7 dynamic lists.

8 THE SPECIAL MASTER: The others are  
9 preserved?

10 MR. SCHAIBLEY: The others are just  
11 individual users added to or removed from them based  
12 off of the owner of the group list.

13 When the initial request came in, I responded  
14 to the litigation group that sent the initial e-mail  
15 that they were distribution groups and not mail  
16 repositories, and was told to only concern myself with  
17 collecting the custodians that were on the list.

18 THE SPECIAL MASTER: Let's add to that those  
19 mails, because they reference in their custodian  
20 interviews, specifically Doug Spring, that he would  
21 use it --

22 MR. SCHAIBLEY: Any e-mail that he or any  
23 other custodian would have sent to one of the  
24 distribution groups would have been preserved in that  
25 user's, that custodian's mailbox.

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1 THE SPECIAL MASTER: As long as they didn't  
2 delete it? I'm not saying he did or didn't. All I'm  
3 saying is from appropriate -- in a sense of where the  
4 evidence sits, the best source of the evidence is the  
5 list.

6 MR. SCHAIBLEY: Correct. And then  
7 additionally it would be in any other mailbox of  
8 recipient on that distribution group.

9 THE SPECIAL MASTER: Just one person that  
10 doesn't delete the e-mails ever ideally would be the  
11 mailing list if that exists.

12 On a go-forward basis, I need you to take  
13 whatever you have for that time period relating to  
14 that mailing list communications that weren't in their  
15 sent folders, if I get what you are saying and see if  
16 there is anything within that time period that still  
17 exists.

18 Because based on Doug Spring's statements --  
19 there is a difference between a mailing and a  
20 distribution list, which is something I get the  
21 difference of.

22 So my only concern is that -- let's go off  
23 the record.

24 (OFF RECORD.)

25 THE SPECIAL MASTER: Go back on the record.

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1 Please state it again. Sorry I forgot we were off the  
2 record.

3 MR. TOSTRUD: So UMC with respect to the  
4 issue of list serves and e-mail, what I will call  
5 blasts, which is probably the wrong term, but I'll use  
6 my layman's term, produced documents, including  
7 e-mails in hard copy form, not in electronic form, to  
8 plaintiffs with their initial disclosures and many  
9 supplements to their initial disclosures. Included in  
10 that grouping were e-mails as Ms. Witty just informed  
11 us from something called the patient --

12 MS. WITTY: Patient service leaders.

13 MR. TOSTRUD: Patient service leaders lit  
14 serve, and that's clearly a very relevant issue, that  
15 those e-mails are relevant based on the issue of the  
16 department of labor investigation and --

17 THE SPECIAL MASTER: That's a whole -- we  
18 have a whole set of other questions around department  
19 of labor --

20 MR. TOSTRUD: The so-called remediation  
21 campaign.

22 THE SPECIAL MASTER: Counsel for UMC.

23 MS. WITTY: Yes. So the patient service  
24 leaders are in a distribution list.

25 THE SPECIAL MASTER: It was at the time a

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1 distribution list?

2 MS. WITTY: Yes.

3 THE SPECIAL MASTER: Under 2003 or 2010?

4 MR. SCHAIBLEY: 2003. It's a distribution  
5 group under 2003.

6 THE SPECIAL MASTER: You understand the  
7 obvious issue we have that if any one of the named  
8 custodians for whatever reason deleted or purged their  
9 sent folder or whatever was sent to that list, that  
10 would end it, because the former counsel never  
11 bothered to tell you to preserve --

12 MR. SCHAIBLEY: When I responded to them that  
13 it was a distribution group, they responded to only  
14 concern with the custodian list because a number of  
15 the custodians were in those distribution groups.

16 THE SPECIAL MASTER: Do you actually know  
17 which custodian? Were they in every group?

18 MR. SCHAIBLEY: I'm pull it up right now.

19 THE SPECIAL MASTER: So can I get that  
20 delineated in a document provided to me, like what  
21 list, what users. So here is a mailing list, here are  
22 the custodians that they were collected from that were  
23 in this, what version of the distribution 2002 you  
24 were using, and then -- yes?

25 MR. TOSTRUD: Yes. Just for clarity's sake,

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1 the documents and e-mails that I referenced were  
2 produced UMC's four settlement to documents and  
3 witnesses submitted to Federal Rule of Civil Procedure  
4 26.1, and the date on that production is August 29th,  
5 2013.

6 THE SPECIAL MASTER: Is there a Bates stamp  
7 on it?

8 MR. TOSTRUD: The Bates stamp numbers for  
9 that production are UMC 10000 through UM C100047.

10 THE SPECIAL MASTER: Got it.

11 I need to get that information before I  
12 figure out -- so I understand the importance of the  
13 information and I note that for the record, I need to  
14 make sure at the very least on a going-forward basis  
15 that it's being preserved properly.

16 So what we need to do is identify a custodian  
17 who exists or create a mailbox or -- I'm not exactly  
18 sure your mail system is set up, but attempt to  
19 identify -- it's tricky because effectively as I  
20 understand it you have to find an individual that  
21 never deleted an e-mail from the list. Is that  
22 accurate?

23 MR. SCHAIBLEY: As accurate as it can be,  
24 yes.

25 THE SPECIAL MASTER: I'm trying to think of

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1 what the alternative might be, because obviously  
2 that's -- given the importance of the communications.

3 MR. TOSTRUD: I'm happy to enter these into  
4 the record.

5 THE SPECIAL MASTER: We took the Bates  
6 numbers.

7 MR. TOSTRUD: There is an e-mail, example,  
8 from Claudette Myers now on behalf of Doug Spring, not  
9 just on behalf of John Espinoza, and she appears to be  
10 gathering many of the responses relating to the  
11 department --

12 THE SPECIAL MASTER: What's the Bates number?

13 MR. TOSTRUD: UMC 100018.

14 THE SPECIAL MASTER: So clearly like we need  
15 to figure this out. Were their mailboxes created --  
16 this makes a nice segue. We need to resolve this  
17 issue.

18 Another area that I have -- want to get some  
19 clarity around was, did counsel I guess prior counsel  
20 ever -- so let me -- timing again -- in April again  
21 you ran the scripts, right?

22 MR. SCHAIBLEY: Correct.

23 THE SPECIAL MASTER: Did anybody ever  
24 visually verify the mailbox structures that you were  
25 getting?

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1 MR. SCHAIBLEY: What do you mean?

2 THE SPECIAL MASTER: Like did counsel sit in  
3 front of you and say, oh, we've got the right user's  
4 mailbox?

5 MR. SCHAIBLEY: No.

6 THE SPECIAL MASTER: And then just to verify,  
7 all I'm saying is did counsel seek to verify or  
8 validate the collection that was done, former counsel?

9 MR. SCHAIBLEY: I cannot answer that. I  
10 pulled the data --

11 THE SPECIAL MASTER: Did they talk to you  
12 about it?

13 MR. SCHAIBLEY: They didn't talk to me about  
14 it. I pulled the data as requested. Their forensic  
15 person made a forensic image of it and that was all I  
16 had to do with it.

17 THE SPECIAL MASTER: A duplicator and boom  
18 done?

19 MR. SCHAIBLEY: Correct.

20 THE SPECIAL MASTER: I'm a little bit  
21 concerned. Maybe even more than a little bit  
22 concerned about how the collection was actually done  
23 and verified.

24 Counsel for UMC, you mentioned you were going  
25 to get me snapshots demonstrating that you verified



1 what the mailboxes were indeed collected as said?

2 MS. WITTY: Yes.

3 THE SPECIAL MASTER: Is that in the works?

4 MS. WITTY: Yes.

5 THE SPECIAL MASTER: Because one of my  
6 concerns is that the collection was done, but no  
7 lawyer actually looked to verify that what they  
8 thought they were getting was what they got.

9 And then you proceeded -- the custodians,  
10 they proceeded to suggest the list of custodians,  
11 never clarified that what you got for the custodians  
12 when the scripts were actually the right information  
13 for what you are looking for; for example, the mailing  
14 list as an example, or related sort of communications,  
15 or the BlackBerry server.

16 So I'm a little concerned, maybe even more  
17 than a little, that that needs to be verified, I need  
18 someone to verify that what you think you have and are  
19 searching is indeed what it is. Does that make sense?

20 MS. WITTY: Yes.

21 THE SPECIAL MASTER: Because then we know at  
22 least on a going-forward basis we have the right  
23 stuff, because we need to make sure.

24 So from plaintiff's perspective, I guess, and  
25 we've agreed that we're going to add -- actually,

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1 counsel for UMC and also Dean particularly, were you  
2 aware of any other laptops during the time period in  
3 question that were being used by any of the  
4 custodians?

5 MR. SCHAIBLEY: No.

6 THE SPECIAL MASTER: Any other devices?  
7 Because nobody apparently had a lab top ever outside  
8 of his personal laptop.

9 MS. WITTY: That's true, yes.

10 MR. SCHAIBLEY: That's correct.

11 THE SPECIAL MASTER: And nobody worked from  
12 home.

13 MR. SCHAIBLEY: Anybody that worked from home  
14 would have worked over TS Web.

15 THE SPECIAL MASTER: Which everybody said  
16 they didn't use because it was too cumbersome?

17 MR. SCHAIBLEY: It is.

18 THE SPECIAL MASTER: Well, have a strong  
19 group of people from UMC who agree with you.

20 I guess I'm trying to reconcile, Counsel,  
21 when we were at the custodian interviews I asked you  
22 specifically how some people mentioned they checked in  
23 on his laptop during his meeting?

24 MS. WITTY: Yes.

25 THE SPECIAL MASTER: No. He checked it

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1 during meetings. He didn't say on his laptop.

2 MS. WITTY: I'm confused.

3 THE SPECIAL MASTER: Well, how can someone  
4 check something during a meeting if they are not --

5 MS. WITTY: The only person who had any  
6 mentioned any access during meetings was James  
7 Mumford.

8 THE SPECIAL MASTER: Yes, James Mumford.

9 MS. WITTY: And he mentioned that he used TS  
10 Web in meetings to allow him to e-mail.

11 THE SPECIAL MASTER: From what device?

12 MS. WITTY: From his personal laptop,  
13 probably in violation of policy.

14 THE SPECIAL MASTER: So let me be clear. I  
15 think you should read the custodian interviews. They  
16 would probably be useful for you, but where I'm a  
17 little let's say confused is Mr. Mumford told us that  
18 he was able to, in meetings, access the --

19 MS. WITTY: Specifically what Mr. Mumford was  
20 referencing was the same as the SEIU negotiations.  
21 That was the only time that he was using those,  
22 because they had to have --

23 THE SPECIAL MASTER: So he had his  
24 personal -- I'm just trying --

25 MS. WITTY: His off campus negotiations, he

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1 would take his personal computer and connect via TS  
2 Web [RPTR NOTE: it's TS Web].

3 Actually one of the e-mails that was  
4 referenced in Mr. Pixley's declaration is from that  
5 time period, has his notes from those negotiations.

6 THE SPECIAL MASTER: Right. So that leads me  
7 into -- do you have a question?

8 MR. TOSTRUD: Plaintiffs would make the same  
9 request with respect to Mr. Mumford's laptop that we  
10 did with respect to Mr. Spring.

11 THE SPECIAL MASTER: I order UMC to preserve  
12 it until we can make a determination if it was indeed  
13 used.

14 If he used it in relevance to or potentially  
15 used it during that time period or was it using it  
16 during the time period in question, he may or may not  
17 have been using it.

18 MS. WITTY: Prior to the time period that was  
19 relevant -- if he was using the laptop prior to the  
20 relevant time period, it's his personal laptop and it  
21 has now elapsed five years.

22 THE SPECIAL MASTER: I'm sure he doesn't have  
23 it.

24 MS. WITTY: I'm just trying to establish what  
25 type of chain of custody information we're going to

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1 need to gather. I can't guarantee that he has the  
2 same laptop.

3 THE SPECIAL MASTER: I hope he doesn't have  
4 the same laptop.

5 MR. TOSTRUD: Again, defendants relied  
6 extensively on the CBA as a defense in this matter.  
7 Plaintiffs and defendants have both briefed --

8 THE SPECIAL MASTER: What's the time period?

9 MR. TOSTRUD: I don't know the time period of  
10 his laptop.

11 THE SPECIAL MASTER: No, you are referring  
12 to, when you say --

13 MR. TOSTRUD: The topic I'm referring to is  
14 the 2008 collective bargaining agreement which was  
15 then I believe amended in 2012, but defendant has  
16 maintained that the 2008 collective bargaining  
17 agreement represents a defense for them to this  
18 collective action.

19 THE SPECIAL MASTER: Let me try this  
20 differently. Is the defense using the collective  
21 bargaining agreement in any way in their arguments in  
22 this case?

23 MS. FOLEY: They did several months ago, yes,  
24 filing a motion to dismiss, I believe prior counsel  
25 did.

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1 MR. TOSTRUD: If they are waiving their  
2 argument, we will on the CBA --

3 THE SPECIAL MASTER: I'm not the judge --  
4 strike it from the record. Off the record.

5 (OFF RECORD.)

6 THE SPECIAL MASTER: I'm going to order you  
7 guys to preserve it because it falls within the time  
8 period.

9 MS. WITTY: I would actually like to counter  
10 that issue. What Mr. Tostrud is specifically  
11 mentioning is that that information that is relevant  
12 to the SEIU negotiations is relevant to the larger  
13 issues.

14 However, at the time period the statute of  
15 limitations relevant to this case starts in July of  
16 2009. All of this information was prior to that. We  
17 have collected through the ESI information from that  
18 time period, information that was either e-mailed or  
19 was in their custodian's home files or profiles, but  
20 that time period, is SEIU negotiations actually fall  
21 outside the statute of limitations in this case.

22 THE SPECIAL MASTER: But just so I get it,  
23 are you using the negotiation, whatever --

24 MS. WITTY: It's not the negotiations that  
25 are relevant to the defense. The defense is the terms

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1 of the CBA with the plaintiffs in this suit control  
2 certain procedures for timekeeping.

3 MS. FOLEY: The document itself...

4 MR. TOSTRUD: Very simple. They have  
5 asserted it as a defense. They brought a motion to  
6 dismiss on its basis. There is no rule that requires  
7 relevant evidence to be limited to the statute of  
8 limitations for the claim. That's just not the way  
9 preservation of evidence works.

10 MS. WITTY: But the negotiation of the CBA is  
11 not pertinent to the actual allegations of this suit.

12 THE SPECIAL MASTER: I feel in some sense  
13 there is more about the merits and I'm not qualified  
14 to rule on anything to do with the merits.

15 What I can speak to is that you believe there  
16 is relevant information that could consist on the  
17 personal laptop.

18 MR. TOSTRUD: Correct.

19 THE SPECIAL MASTER: Distill it down to what  
20 I need. You believe in your perspective that there is  
21 no relevant information on the laptop relating to this  
22 dispute?

23 MS. WITTY: Not locally. It was all accessed  
24 through TSY.

25 THE SPECIAL MASTER: Just on the laptop.

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1 We're not doing it locally. Just on that laptop?

2 MS. WITTY: No, at this point.

3 MR. TOSTRUD: Plaintiffs would simply ask it  
4 be preserved --

5 THE SPECIAL MASTER: I'm just thinking. Give  
6 me two seconds.

7 I'm going to order the preservation and  
8 finding the laptop for purposes of waiting for the  
9 Court to make a finding as to whether or not as to the  
10 merits of what you are talking about, because based  
11 upon what's been presented to me and the system has  
12 been designed and built, he could have accessed it and  
13 cashed the copies, set up his e-mail account on his  
14 local laptop using the IMAP server and the SMTP to  
15 send and receive from that local laptop.

16 There is no way to actually know with  
17 certainty it was or was not happening, but we do know  
18 he was using it at the time in negotiations off site,  
19 and I have to assume that he was e-mailing or having  
20 communications with people while he was off site using  
21 some device.

22 And since we don't have any of his mobile  
23 devices, it's near impossible for me to make a  
24 determination as to whether or not that may or may not  
25 have information, but the real possibility does exist



1 that if he was working offsite in negotiations at the  
2 time that he configured the laptop to send and receive  
3 e-mails and that the only place that those e-mails may  
4 exist today would sit on that computer, because of the  
5 way UMC's backup policies and other procedures operate  
6 today that that is literally -- and there is no  
7 back-up tape, the only potential source of that  
8 information and it's a practical perspective that it  
9 could have that information if he was working offsite  
10 and he didn't have -- if you read his custodian  
11 interview he says that he didn't have a smart phone at  
12 the time to communicate, and I'm assuming that he was  
13 sending e-mails back and forth somehow. I mean, maybe  
14 I'm wrong, but...

15 Maybe I got it wrong, but you were going to  
16 provide me that information and you gave it as a  
17 supplement, and if you look at your supplement --

18 MS. WITTY: Only had a cellphone at that  
19 time.

20 THE SPECIAL MASTER: So the only way he could  
21 have been sending and receiving e-mail, as far as I  
22 know from the information that has been given to me,  
23 would be using that laptop.

24 So that's why I'm going to order the  
25 preservation today that the judge make a ruling as to

1 whether or not -- I don't understand the intricacies  
2 of labor law, unfortunately, enough to participate in  
3 any dispositive action that I feel the remotest sense  
4 of comfort level.

5 So I'm going to order the preservation. I'm  
6 going to sit on it, look at the transcript, but I just  
7 want to understand. My reasoning is very simple and I  
8 want to spell it out so there is no confusion.

9 He had a laptop. He did have a smart phone  
10 that could send e-mails and communicate at the time.  
11 He was working offsite using this laptop.

12 And I'm assuming if he was in negotiations he  
13 was sending back and forth documents. If he wasn't  
14 then it's a core assumption but I have to assume if he  
15 was negotiating he most likely was having some way of  
16 communicating back and forth with individuals.

17 Since UMC's system itself requires a users it  
18 was possible for them to configure their e-mail  
19 account to be used by a personal laptop at that time,  
20 and it's also possible and likely that the only place  
21 that those e-mail messages could sit today would be in  
22 one of three places, in his sent mail folder items on  
23 the script that was run, but if he deleted them or  
24 purged them or any one of a number of things could  
25 have happened, they are not there. There is no backup

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1 tapes from that time period. So the only possible  
2 source today that we could use to validate if it turns  
3 out the judge rules that indeed this is within --  
4 before I go too far, strike the judge piece, but  
5 that's the reason why I'm ordering the preservation.  
6 I want a forensic image created, E 01, I want a change  
7 of custody form filled out, and I want it preserved.  
8 I'm making no ruling or determination at this stage  
9 until we actually see when the e-mails starts flowing  
10 to your side you'll be able to make a much -- like,  
11 for example, if he was actually e-mailing when he was  
12 supposedly in negotiations, then we know fairly  
13 definitively he was using his laptop at the time  
14 because that was the only mobile device he had that  
15 could have possibly be sending e-mails. So we just  
16 need to get a little more information and then we can  
17 make a more educated determination as to whether or  
18 not it's appropriate, but I think we can all agree  
19 that there were e-mails sent during the time when he  
20 was negotiating, using his personal laptop, then in  
21 all likelihood, there probably needs to be searched.  
22 But I'm going to reserve any judgment on that until --  
23 and I also recognize that UMC's counsel relied upon  
24 prior counsel to have done this and that the time has  
25 elapsed, but with the utmost speed and urgency they

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1 should do this.

2 MR. TOSTRUD: Special Master Garrie,  
3 plaintiffs initial presentation letter August 6, 2012,  
4 directed to Mr. Brandon specifically identifies and I  
5 quote from page 3 this preservation notice pertains to  
6 all documents as defined herein which have been  
7 written or generated from July 2008, 2008 through the  
8 present, and I'd like to enter --

9 THE SPECIAL MASTER: Can we enter that just  
10 so I have a record because there was several  
11 preservation letters provided to me and then there  
12 were the same letters were attached to multiple  
13 arguments and I got inherently confused.

14 MR. TOSTRUD: That's the initial preservation  
15 letter.

16 (Exhibit 6 was marked  
17 by the Certified Court Reporter.)

18 THE SPECIAL MASTER: And I'm going to reserve  
19 judgment until we actually go down a little bit.

20 Just for purposes of the IT security piece of  
21 the puzzle, when someone wants to use a personal  
22 laptop to access, they don't need to ask if they use  
23 the TS Web; right?

24 MR. SCHAIBLEY: They have to be a member of  
25 the TS Web group, so they do have to get authorization

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1 to use TS Web. Now, once they have been approved to  
2 use it, then they don't need to ask any time they go  
3 in.

4 THE SPECIAL MASTER: Is there a client?

5 MR. SCHAIBLEY: It is, it is a remote desktop  
6 server.

7 THE SPECIAL MASTER: Oh, it is?

8 MR. SCHAIBLEY: Yes.

9 THE SPECIAL MASTER: Do you have server logs?

10 A. We do have the server log and with regard to  
11 Mr. Mumford part of his collection that was done for  
12 him was his local profile on that server.

13 THE SPECIAL MASTER: Let's look at that. So  
14 does everybody understand what was just said?

15 MR. TOSTRUD: Yes.

16 THE SPECIAL MASTER: Checking.

17 I think now we're at a decent breaking point.  
18 We still have several points --

19 MR. GODINO: Before we break, with a huge  
20 caveat that we have a limited ability to search the  
21 ESI that was produced and a limited ability to view.  
22 We were able to do a search for the phrase "sent from  
23 my iPhone" and came up with about 100 hits.

24 THE SPECIAL MASTER: Usually that's how --  
25 let's go off the record.

1 (LUNCH RECESS.)

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1 Las Vegas, Nevada; Friday, April 4, 2014

2 1:09 P.M.

3 Afternoon Session

4

5 THE SPECIAL MASTER: Without further ado, I'm  
6 going to continue forward.

7 One thing I wanted to go forward, revisit  
8 that I wrote down and I want to touch on the  
9 production schedule, is I want to go through the  
10 mobile devices. I want to put -- I want to resolve  
11 what we've actually done to date, what we understand  
12 we have, what we understand is no longer with us in  
13 our possession, custody, or control.

14 So based on the custodian interviews and  
15 information I've provided. I think what I'm going to  
16 do is let counsel walk us through. Would you mind,  
17 Counsel, walking us through the mobile devices with  
18 the information.

19 MS. WITTY: Specific to the UMC issue  
20 directly?

21 THE SPECIAL MASTER: Yes. We're going to  
22 sort out -- let me write that down. Par.

23 MS. WITTY: There are only three of the  
24 custodians and that also is including the newly added  
25 Claudette Myers and Cindy Dwyer, only three St. Louis

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1 UMC issued phones. John Espinoza, James Mumford, and  
2 the former CEO Brian Brannman.

3 Mr. Espinoza has had the same BlackBerry  
4 curve 8530 for the entire relevant time period.

5 THE SPECIAL MASTER: Can I ask, when did he  
6 get it?

7 MS. WITTY: That I do not have, but that can  
8 be obtained. It was prior to September of 2008,  
9 because the first update to the BlackBerry was in  
10 September, was on September 22nd of 2008.

11 THE SPECIAL MASTER: That's what I thought.

12 MS. WITTY: Yes. It was also updated a  
13 second time on January 20th of 2011.

14 THE SPECIAL MASTER: When you mean updated,  
15 specifically updating as the way we have already  
16 discussed where it's wiped, where they push a clean  
17 bill of -- and we're going to talk to the BlackBerry  
18 administrator on Monday to understand, if you  
19 preserve -- I want to understand how the BlackBerry --

20 MS. WITTY: How it backs up.

21 THE SPECIAL MASTER: How backs it up before  
22 he wipes it, the other pieces that we'll clear up on  
23 Monday.

24 MS. WITTY: Yes. The next custodian was  
25 James Mumford. He originally had a UMC flip phone.



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1 It was non text enabled, non data enabled. He  
2 received that when he started with UMC, so it's been  
3 13 years. He was upgraded to a BlackBerry 9330 on  
4 April 1st of 2011. Since then he's had the same  
5 phone. It was update again on September 15th, 2011,  
6 and a second time February 6th of 2012.

7 THE SPECIAL MASTER: Just again, when we say  
8 upgraded here, we're referring to the UMC protocol of  
9 upgrade where they wipe and push a new build?

10 MS. WITTY: Correct.

11 The final custodian was Brian Brannman. His  
12 initial phone, when he was hired in February of 2011  
13 was a BlackBerry curve 8530. It was updated -- excuse  
14 me --

15 THE SPECIAL MASTER: Got a new one.

16 MS. WITTY: He received a new device, a  
17 BlackBerry curve 4 on July 19th of 2013. Mr. Brannman  
18 is no longer with UMC, so both of those phones have  
19 been wiped. But the devices are sometime held by UMC.  
20 So if there was anything that could be recoverable,  
21 they still have those devices.

22 THE SPECIAL MASTER: Joseph, you created  
23 forensic images of them?

24 MR. EDMONDSON: Yes, the three that were  
25 presented to me.

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1 THE SPECIAL MASTER: There's more than...

2 MS. WITTY: I believe the forensic images  
3 were of the BlackBerry curve for Mr. Brannman.

4 THE SPECIAL MASTER: The 4?

5 MS. WITTY: The 4, yes. The BlackBerry curve  
6 8530 for Mr. Brannman was not imaged.

7 THE SPECIAL MASTER: But you have it?

8 MS. WITTY: Yes.

9 THE SPECIAL MASTER: And, yeah, that's all I  
10 wanted to -- and with regards to in the custodian  
11 interviews we had further there was inquiries to  
12 whether or not they had personal devices that they  
13 worked for work, they all had different personal  
14 devices but none of them were actually, as far as to  
15 the best of their recollection besides --

16 MS. WITTY: Mr. Mumford did not have a  
17 personal device.

18 THE SPECIAL MASTER: He did not have a  
19 personal device. He only had a work device, but  
20 everybody else had a personal and a work that was  
21 separated by church and state as one set.

22 I'm going to request that -- well, again, we  
23 need to talk to the BlackBerry administrator because  
24 if it was -- I mean, you have in your possession,  
25 custody, and control right now, so before we create a

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1 forensic image of it, let's make sure that there is  
2 something that can actually be recovered from the  
3 wipe.

4 I don't know. Wipe ask like an esoteric  
5 concept from a technology perspective it means one  
6 thing and to everybody it might mean something else,  
7 so I would rather have the available on Monday and we  
8 can quickly figure out what is or isn't necessary.

9 With the mobile phone piece, I was also  
10 thinking you might want to do iPhone, I pad or powered  
11 by. Because they have the Droid, I forget, like -- I  
12 don't have T-Mobile but they have some of the Android  
13 bases have power --

14 MR. TOSTRUD: That's their signature line.

15 THE SPECIAL MASTER: Signature powered by  
16 something or other. Just as a search phrase just to  
17 make sure.

18 Theoretically it should be a fairly trivial  
19 exercise to look at this. It should be "powered by  
20 colon," and you should -- the only hits you should be  
21 looking for or seeing are iPhone or iPad or  
22 Android-related devices, which you will figure out  
23 they whether or not they were or were not being used  
24 at the time.

25 Does anybody have anything they want to add

1     there?

2                 MR. TOSTRUD:   Just a question.   Will the  
3     custodian interviews identify the dates that those  
4     so-called wipes occurred?

5                 MS. WITTY:    Yes.

6                 THE SPECIAL MASTER:   Just want to check in on  
7     Kronos.   Are we good with Kronos from the plaintiff's  
8     side?

9                 MR. FORREST:   So far so good we've gotten our  
10    information and we have made calculations on that.  
11    Now we're working on linking it up to the wage data.  
12    I'm not sure there is going to be an outstanding  
13    question in terms of wage data in Kronos not  
14    reflecting modifications made in the SAP system.

15                THE SPECIAL MASTER:   The SAP system I believe  
16    is only -- this is something I'd like clarity on as  
17    well.   I'm not sure what the SAP system was used for.  
18    I understood from your papers that you believe it was  
19    used in some fashion relating to your complaint or  
20    your claim.   No?   Is that incorrect?

21                MR. TOSTRUD:   I think our position is that  
22    the defendants represented to us that there is some  
23    electronic interface between Kronos and SAP.   They've  
24    provided us, defendant provided us with the SAP or  
25    with the Kronos database, but apparently that database

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1 won't necessarily allow us to compute all of the --

2 THE SPECIAL MASTER: I got it. You don't  
3 have full visibility into how it was configured.

4 MR. TOSTRUD: Correct.

5 THE SPECIAL MASTER: Does anybody on the UMC  
6 side most.

7 MS. WITTY: We're not exactly sure what  
8 information they are wanting. It's our  
9 understanding --

10 THE SPECIAL MASTER: Before we get to what  
11 they are wanting, I want to understand, does the SAP  
12 system actually have data relating to this dispute?  
13 Because does it -- is it employee data relate or  
14 the -- like what data is in the SAP system.

15 MS. WITTY: It's personnel information.

16 THE SPECIAL MASTER: So personal files.

17 MS. WITTY: Yes. So it would be if you were  
18 looking for someone's contact information or someone's  
19 title, you wanted the SAP --

20 THE SPECIAL MASTER: But to be clear, that  
21 system is actually run not by UMC but by the pseudo-  
22 state organization.

23 MS. WITTY: Correct, because Clark County  
24 actually runs.

25 THE SPECIAL MASTER: The SAP platform.

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1 MS. WITTY: The SAP platform.

2 THE SPECIAL MASTER: Is there somebody within  
3 UMC that actually does SAP based work technically?

4 MS. WITTY: I don't believe so.

5 THE SPECIAL MASTER: So before we get into --  
6 I'm just trying to understand the big picture because  
7 I got a little confused with it.

8 So who configures the SAP system to work with  
9 Kronos. Is it an individual at UMC or an individual  
10 with Clark County?

11 MS. WITTY: I believe it's with Clark County.

12 THE SPECIAL MASTER: So we would, then taking  
13 me to my next question, does anybody actually know  
14 from the UMC side how the Kronos and the SAP are  
15 interacting?

16 A. So SAP, the reason why it interacts is once  
17 that timekeeping information --

18 THE SPECIAL MASTER: Let's say I'm an  
19 employee. There is worker A who goes to work, Kronos  
20 SAP, what happens?

21 A. Just a regular employee.

22 THE SPECIAL MASTER: Regular person.

23 A. When they clock in, so when they call into  
24 the system, that is captured by Kronos. When they  
25 clock out, that is captured by Kronos. Similarly when

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1 they have a missed lunch or some other adjustment to  
2 their time that is made, that is made in Kronos.

3 THE SPECIAL MASTER: Because Kronos and SAP  
4 can capture the very same data, you realize?

5 MS. WITTY: Yes.

6 THE SPECIAL MASTER: So that's why I'm  
7 asking, and I haven't seen any of your database field  
8 screen, so I have no knowledge to which one does what.

9 So your Kronos system is used internally to  
10 track basically hours?

11 MS. WITTY: Yes.

12 THE SPECIAL MASTER: For lack of a better  
13 term.

14 How does SAP plug into that?

15 MS. WITTY: So in order to generate -- so  
16 from Kronos they generate essentially a report that  
17 says this is how much time is worked. That would  
18 include your calculated enrollee, that would  
19 include --

20 THE SPECIAL MASTER: Kronos stores all of  
21 this data about me and my work performance and  
22 generates a report?

23 MS. WITTY: If it includes over time, if it  
24 includes all the other information. It has to  
25 interact with SAP because the payroll goes through

1 SAP.

2 THE SPECIAL MASTER: Got it now. SAP is a  
3 payroll system?

4 MS. WITTY: Yes.

5 THE SPECIAL MASTER: Is that what we're  
6 talking about here? Okay. We need to figure out  
7 if -- because it makes a difference as to whether or  
8 not, A, I assume it's being preserved because SAP is  
9 fairly hard to delete data out of it, believe it or  
10 not. Most people can't figure out to delete the data  
11 out of SAP most of the time, which is a blessing, I  
12 guess, for everybody.

13 The question then becomes, you guys are then  
14 taking Kronos data collectively, whatever it is, some  
15 hourly reporting, provide some data a scheme a to SAP,  
16 Clark County, SAP platform, which then cuts payroll,  
17 is that how that works?

18 A. Yes.

19 THE SPECIAL MASTER: So then the wage  
20 piece -- I just want to understand the systems and  
21 then I'll entertain everything.

22 So then -- so if there is a problem with my  
23 wage, I talk to the person that runs SAP, the person  
24 who runs Kronos?

25 A. You talk to someone in payroll because they



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1 would be the ones that would interact with the SAP.

2 THE SPECIAL MASTER: So the payroll people  
3 internally use the client system, that's the Jackie  
4 Panzeri, she uses a client based system to input her  
5 work with the SAP Clark County system to resolve  
6 payroll issues?

7 A. Yes.

8 THE SPECIAL MASTER: But that data doesn't  
9 actually sit on your systems, it sits on their  
10 systems?

11 A. Correct, it is on their system.

12 THE SPECIAL MASTER: All right. So now at  
13 least I have a decent understanding, which then would  
14 explain when they run the script that everybody has  
15 the same exact set of files.

16 MR. FORREST: Also my understanding is from  
17 earlier conversations it may be possible to make  
18 adjustments in the wage data and the payment data over  
19 on the SAP side.

20 THE SPECIAL MASTER: Just to be clear, the  
21 issue of your question is, I call up UMC and I'm like  
22 I'm getting -- pretending a hypothetical here, I am an  
23 employee and I worked 90 hours this week but you only  
24 paid me for 50 of them and you shortchanged me 40  
25 hours of my time in my paycheck. The paycheck comes

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1 from Clark County's SAP division, but I call UMC's  
2 payroll person. The question you have is so I call  
3 her and I'm like here's my hours, whatever, she's oh,  
4 you're right, she updates the system on her side,  
5 amended that feeds into the SAP side, or your question  
6 is, does she actually directly update the SAP and that  
7 feedback into Kronos.

8 MR. FORREST: Or not back into Kronos.

9 THE SPECIAL MASTER: Either it does feedback  
10 in or it doesn't feedback in, the fact that my 40  
11 hours weren't documented. That's your concern?

12 MR. FORREST: Yes, or specific numeric  
13 adjustments made in response thereto.

14 THE SPECIAL MASTER: Just basically if I call  
15 somebody up and I call up payroll and where are my 40  
16 hours and they are what 40 hours are you talking  
17 about, the question is when I fix it is it being fixed  
18 in Kronos and SAP or just SAP or just Kronos, and  
19 that's the question, as I understand it. Is that  
20 right.

21 MR. GODINO: SAP and --

22 MR. FORREST: Or there could be something  
23 applied on a general basis. There could be some sort  
24 of adjustment rule that's applied or something. We  
25 don't know.

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1 THE SPECIAL MASTER: When you say adjustment  
2 rule, let's stick with my 90-hour week and I was  
3 shorted 40 hours. Help me understand. When you say a  
4 adjustment -- we're talking payroll. So the payroll  
5 person would have to do what to the SAP -- I just want  
6 to understand what an adjustment means from your  
7 perspective, because a SAP adjustment is you write a  
8 rule and it runs and the SAP has their own language.

9 MR. FORREST: I'm just talking about any  
10 situation where the data that's retained in Kronos  
11 would not reflect what was actually paid.

12 THE SPECIAL MASTER just want to make sure  
13 that cash and timeline up.

14 MS. WITTY: All of that information has been  
15 provided in the packets. Because we don't have access  
16 to the SAP --

17 THE SPECIAL MASTER: Whether it's provided or  
18 not, I just want to make sure I understand it and you  
19 understand it, and then we can talk about a solution  
20 or whether it's been provided..

21 Okay. So you understand what they are  
22 saying. I get it. So we're all on the same page  
23 here. Basically the amount I got paid, minus the  
24 number of hours I worked. And if it doesn't --

25 MR. FORREST: Have the right.

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1 THE SPECIAL MASTER: Yeah, but if my amount  
2 has to be --

3 MS. WITTY: Based on --

4 THE SPECIAL MASTER: Forget we're on the  
5 record. So yes, correct. Off the record.

6 (OFF RECORD.)

7 THE SPECIAL MASTER: Back on the record.

8 Opt-in packets, I've steered clear of these  
9 because there's 600 things I don't want to read.

10 And the Court, there was a whole discussion.  
11 I had the fortune and opportunity to read the great  
12 lawyering work that was done around this, and there  
13 was zealous advocacy, and packets were provided in a  
14 staggered fashion, I think 50, 100 -- but they all  
15 eventually made it over.

16 The packets, as I understand it, as you  
17 believe as UMC believes has this information in it.  
18 Is that accurate.

19 MS. WITTY: Yes, and that's how UMC accesses  
20 that information. That's exactly how they would have  
21 access to it.

22 THE SPECIAL MASTER: When you say they have  
23 access to, so the data -- did you get the packets.

24 MR. GODINO: Plaintiffs received them.

25 THE SPECIAL MASTER: But have you guys

1 processed the packets and ingested the data from the  
2 packets.

3 MR. TOSTRUD: No.

4 MR. GODINO: Well...

5 THE SPECIAL MASTER: If they are saying the  
6 data is in the packets, I'm just trying to figure it  
7 out.

8 MR. TOSTRUD: The issue with Kronos is that  
9 we believed -- and I'm not looking to reargue this. I  
10 just would like to provide some background.

11 We believed that they could export some  
12 information from Kronos and generate spreadsheets for  
13 all the people. This is routinely done in these  
14 cases, litigated several of them, and that's what we  
15 had hoped to do, but UMC, and this has been  
16 litigated -- I'm not looking to re-litigate it -- UMC  
17 represented that it either couldn't or wouldn't do  
18 that, and that we all the information in these opt-in  
19 packets, which can be somewhat unwieldy to try to, you  
20 know, distill.

21 So the judge in the case said, okay, fine,  
22 you don't -- you can't do it, I'm not going to force  
23 you to do it, but what I am going to force you to do  
24 is to give the plaintiffs the Kronos data in its raw  
25 native form.

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1 THE SPECIAL MASTER: I read that ruling.

2 MR. TOSTRUD: So that was provided to us  
3 sometime in early February, I believe, and we are now  
4 working with it. We believe that all of the lines are  
5 there and those things are there, but what we are a  
6 little unclear about is how this interacts with SAP.

7 THE SPECIAL MASTER: At least I get what the  
8 issue is now.

9 So here's what I'm going to suggest.

10 Why don't you figure out from the Kronos  
11 perspective and take a dozen packets that they  
12 provided and see -- and I don't particularly wanting  
13 to see them. I am hoping this solves the problem. If  
14 it doesn't, I'll revisit the issue.

15 Why don't we reexamine to see whether the  
16 data in the packets they gave you have the requisite  
17 data that you need out of SAP, because the problem  
18 we're going to run into is they don't control the SAP  
19 system, and because they don't control the SAP system,  
20 to get a export out of SAP is going to take -- it's a  
21 state-run organization.

22 MS. WITTY: Local government.

23 THE SPECIAL MASTER: Local government  
24 organization -- let's go off the record for a second.

25 (OFF RECORD.)

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1 THE SPECIAL MASTER: On the record.

2 MR. TOSTRUD: With respect to the issue of  
3 the Kronos database and in the interest of cooperation  
4 and the spirit of trying to be efficient, we would  
5 again extend to the defendant an opportunity to try to  
6 meet and resolve this together collectively if for no  
7 other reason than we both need this information and  
8 having an agreed-upon set of data that we can proceed  
9 with moving forward is absolutely in both parties'  
10 interest. I say that based on personal experience  
11 having litigated many of these cases that --

12 THE SPECIAL MASTER: It just makes sense that  
13 you both need the same data so you can talk to the  
14 Court.

15 MR. TOSTRUD: Correct. That's what we would  
16 offer to go and sit with them, Mr. Schaibley or  
17 whatever.

18 THE SPECIAL MASTER: Before we get UMC  
19 involved here, what I would like to suggest, if the  
20 packets don't work or you need other pieces, come back  
21 to me to the parties, say, hey, look, the packets  
22 don't provide this like X, Y, and Z that we need. As  
23 soon as we have we can have intelligible conversation  
24 and we can move across the finish line quickly.

25 MR. TOSTRUD: Certainly.

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1 THE SPECIAL MASTER: I want to talk about  
2 storage devices. Now, I'm going to talk about removal  
3 storage devices and I want to talk about storage  
4 servers, Hitachi -- like big storage. I first want to  
5 talk about storage devices.

6 When somebody has a computer, a desktop and  
7 we'll get to the desktops shortly, but when someone  
8 has a computer, do they have the ability to burn a  
9 disc of information?

10 MR. SCHAIBLEY: A generally user, no, they  
11 would have to go through somebody in the IT department  
12 first.

13 THE SPECIAL MASTER: When you say general  
14 user is that a non IT user?

15 A. Yes.

16 THE SPECIAL MASTER: So all of the six  
17 custodians, they would be general users and would have  
18 to go to IT?

19 A. Correct.

20 THE SPECIAL MASTER: To be clear, because in  
21 some of the custodian interviews it was brought to my  
22 attention that -- counsel witty correct me if I'm  
23 wrong -- that discs of scanned information were  
24 created. I'm not exactly sure what's on the discs.  
25 But one thing that I would like counsel to do is at



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1 least for the time period in question, since, as I  
2 understand it; correct me if I'm wrong, Counsel  
3 witty -- where are they stored?

4 MS. WITTY: Coordinate with iron mountain.  
5 It's a third party storage, both physical and  
6 electronic.

7 THE SPECIAL MASTER: Just so I understand,  
8 from your perspective, I come in, I have to talk to  
9 IT. IT says okay, you can burn -- I'm going to give  
10 you permission to cut a disc of information.

11 MR. SCHAIBLEY: Correct. It's coordinated  
12 through IT for the users to be able to do that. It  
13 would typically be done through our ticketing service,  
14 ticketing system.

15 THE SPECIAL MASTER: Here's the situation.  
16 We have custodian interviews where people have said  
17 they made discs. The problem is they didn't tell us  
18 when they made the discs.

19 Counsel Witty?

20 MS. WITTY: So the only person who actually  
21 physically burns disc is Ms. Myers. It's her  
22 interpretation the discs she burns are related to  
23 grievances hearings, however. Mr. Espinoza, in the  
24 previous recruitment and search for a CEO, believed  
25 that there had been documentation that he had sent to

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1 iron mountain and some of that was scanned, and he  
2 felt some of that scanning had been burned to the disc  
3 and submitted to iron mountain.

4 THE SPECIAL MASTER: Can you please check --  
5 how far back does your help IT ticketing system go.

6 MR. SCHAIBLEY: I'd have to check on that.

7 THE SPECIAL MASTER: I'm hoping you come back  
8 and tell me 2008 and we're good.

9 MR. SCHAIBLEY: I would honestly have to  
10 check on that.

11 THE SPECIAL MASTER: First I'm going to ask  
12 quote order you to get me an answer. It does go back  
13 to the time period in question and if your IT systems  
14 are built so that a user has to go to you with a  
15 ticket, just run me a report for the custodians of  
16 interest that have been identified to see if discs  
17 have been burned during those time periods, and then  
18 we'll go forward from there. I would like that by  
19 next Friday, if possible.

20 And the obvious reason is I want to make sure  
21 if there are discs, that they are identified properly  
22 and accordingly.

23 Now, what about USB sticks?

24 MR. SCHAIBLEY: USBs are current little  
25 denied by policy. If an end-user needs to use USB

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1 flashes they 22 have to come through IT security and  
2 they would get one similar to this one here.

3 THE SPECIAL MASTER: I use just old school  
4 cardboard and super glue.

5 MR. SCHAIBLEY: Just regular USBs are not  
6 allowed. If you plug it in and we get it, access to  
7 them is disabled.

8 THE SPECIAL MASTER: Was that during the time  
9 period in question or now?

10 MR. SCHAIBLEY: During the time period in  
11 question we were set up in passive mode. I do not  
12 know when it began. We turned off passive mode and  
13 turned on active blocking in October of 2012.

14 THE SPECIAL MASTER: I'm not terribly  
15 concerned because none of the custodians stated they  
16 were using USB storage devices, and I will take them  
17 on their word at this point. I believe none of them  
18 said they were.

19 But if you could figure that out, that would  
20 be helpful, for the USB devices, when it was switched  
21 from passive.

22 MR. SCHAIBLEY: Switched from passive to  
23 active was October 2012. What I don't know is when it  
24 first got turned onto passive.

25 Passive means if a USB stick was plugged in,

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1 the system was recognized it was plugged in, IT  
2 security would get an alert it was plugged in, but it  
3 wouldn't stop it from being accessible.

4 THE SPECIAL MASTER: But there would be a log  
5 of it?

6 MR. SCHAIBLEY: I would have to see if that  
7 log is still maintained, because we have recently  
8 upgraded the database.

9 THE SPECIAL MASTER: That's fine. Nobody  
10 said they were using it. It's just me being diligent.  
11 I don't actually foresee -- it's just the scanned  
12 discs that are really of interest.

13 The one other thing -- well, there are  
14 several other things, but I want to talk about the  
15 department of labor. I'm a little confused, and I now  
16 apologize up front. I tried to be diligent and it  
17 took way more than 70 hours to read the 2500-plus  
18 pages and make my data map.

19 In the course of reading everything I got  
20 somewhat confused as to -- can someone start with the  
21 investigation of the department of labor, when it  
22 started from -- just when was UMC notified? Like when  
23 did that conversation start? That started with prior  
24 counsel, I assume.

25 MS. WITTY: Prior counsel on this suit was

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1 not actually involved in the D.O. L investigation.

2 THE SPECIAL MASTER: Who was attorney or  
3 in-house or otherwise that was -- or was it just  
4 Mr. Spring involved?

5 MS. WITTY: It was John Espinoza was the main  
6 contact within UMC for the department of labor  
7 investigation. Doug Spring, as Mr. Espinoza's  
8 subordinate, assisted but not in direct contact.  
9 There was limited interaction with county counsel, so  
10 not in-house but supervisor counsel through the  
11 county.

12 THE SPECIAL MASTER: And what was the time  
13 period there?

14 MS. WITTY: It was in -- correct me if I'm  
15 wrong. I'm thinking it would have been early --

16 THE SPECIAL MASTER: Plaintiffs you must  
17 know. When was it? Do you know?

18 MR. TOSTRUD: We believe, based on discovery,  
19 that it was in the fall of 2012.

20 MS. WITTY: I think the initial contact was  
21 made during the summer, because it was prior to --  
22 most of the investigation prior to the filing of this  
23 lawsuit. It would have occurred in the late Spring or  
24 early summer of 2012. I can absolutely --

25 THE SPECIAL MASTER: We definitely need to

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1 know when.

2 MR. TOSTRUD: We plaintiffs have not received  
3 that notice if there is a document that indicated that  
4 there was a notice.

5 THE SPECIAL MASTER: We haven't received any  
6 electronic documents.

7 MR. TOSTRUD: No. That's right. But we've  
8 received some documents between the department of  
9 labor and UMC, but we are not aware of this notice.

10 THE SPECIAL MASTER: Well, let's add that to  
11 the notes that you guys are covering so we can make  
12 sure that the --

13 Returning back to --

14 MS. WITTY: I just want to make sure we'll  
15 coordinate with the plaintiffs to make sure we have a  
16 firm timeline on that.

17 THE SPECIAL MASTER: Yes, firm timeline, and  
18 if the notice letter is discoverable and there is no  
19 objection by UMC, produced accordingly. If there is,  
20 then we can have a conversation about privilege, etc.

21 I need to understand something, I don't mean  
22 to sound a bit slow here, but you had supervisor  
23 counsel, were you aware of the department of labor  
24 investigation?

25 MR. SCHAIBLEY: No, I was not.

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1 THE SPECIAL MASTER: And you would be the  
2 person who would be responsible for running any sort  
3 of collection or etc., for UMC if there was?

4 A. Yes, if it was brought to us, yes, if it  
5 happened prior to my starting at UMC.

6 THE SPECIAL MASTER: This was when?

7 A. I started in June of 2012.

8 THE SPECIAL MASTER: Wow, this date is going  
9 to come down to being really important.

10 The department of labor investigation, did  
11 that involve, as far as UMC's involved the collection  
12 of any data or documents.

13 MS. WITTY: No.

14 THE SPECIAL MASTER: Plaintiffs, do you have  
15 any idea, from what you have been able to figure out?

16 MR. TOSTRUD: Maybe I misunderstood the  
17 question or misheard it.

18 THE SPECIAL MASTER: Department of labor ran  
19 an investigation and I asked UMC did they provide  
20 any -- collect any information, electronically and  
21 provide it to the department of labor.

22 And UMC said no, right, as far as you know?

23 MS. WITTY: Right.

24 THE SPECIAL MASTER: Do you know -- I mean --

25 MR. TOSTRUD: We deposed Mr. Espinoza, who

1 was directly involved. He indicated that he provided  
2 information --

3 THE SPECIAL MASTER: No, I read that. If  
4 you wanted to provide me the transcript, that would be  
5 useful. You have it. You provided it in one of your  
6 filings that you gave me.

7 MR. TOSTRUD: Yes. He testified about having  
8 I believe e-mailed with them.

9 THE SPECIAL MASTER: If we could put it in  
10 the record, that might be useful.

11 MR. TOSTRUD: I'll attempt to find that.  
12 Furthermore, there are several documents that have  
13 been produced to us, including e-mails related to the  
14 department of labor investigation as well as what  
15 looked to be spreadsheets relating to calculations of  
16 over time paid that -- of pay -- of time worked that  
17 was not compensated, uncompensated time, calculations  
18 of uncompensated time.

19 THE SPECIAL MASTER: Who provided you the  
20 spreadsheets? Can you provide them so we can put them  
21 on the record?

22 MR. TOSTRUD: They were produced in discovery  
23 in this matter.

24 THE SPECIAL MASTER: While you are looking  
25 for that, UMC, are you aware of these spreadsheets?



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1 MS. WITTY: Yes. They were produced.

2 THE SPECIAL MASTER: I mean, but who made  
3 them? Like how -- if you guys didn't collect  
4 anything, that would imply that you made these  
5 spreadsheets specific for them because that would  
6 imply you didn't collect any information.

7 MS. WITTY: They were created within John  
8 Espinoza's office.

9 THE SPECIAL MASTER: And they were created  
10 specifically in response to the department of labor  
11 investigation?

12 MS. WITTY: Yes.

13 THE SPECIAL MASTER: Did he create any data  
14 to prepare the spreadsheets.

15 MS. WITTY: I believe there was information  
16 collected from Kronos.

17 THE SPECIAL MASTER: I'm not trying to -- all  
18 I am trying to figure out is the way I understand the  
19 situation -- off the record.

20 (OFF RECORD.)

21 THE SPECIAL MASTER: Back on the record. I'm  
22 going to request that UMC just verify via through  
23 their IT -- I need somebody within UMC's IT Department  
24 to verify that there was no internal collection in  
25 relation to the department of labor investigation. If

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1 you weren't there at the time when this was done, I  
2 would prefer to hear firsthand from the person that  
3 was involved and say I did not do anything. I  
4 understand you didn't, which makes total sense, but it  
5 would be -- I mean -- and I would like that by next  
6 Thursday.

7 MR. TOSTRUD: And I was able to identify some  
8 documents relating to the department of labor  
9 investigation, and we'll have to look through the depo  
10 transcript on this, Special Master Garrie, but  
11 certainly UMC 100001 and 10003 plus some additional  
12 documents that are attached, these are calculations  
13 that were made in spreadsheet form and we don't know  
14 who made them, I don't believe, but they were provided  
15 to UMC or UMC provided them to the department of  
16 labor. Clearly that was created electronically. We  
17 would like to put those into the record.

18 THE SPECIAL MASTER: Counsel, do you want to  
19 look at them?

20 MS. WITTY: Yes, if you wouldn't mind. I  
21 didn't hear the Bates numbers.

22 THE SPECIAL MASTER: So then, the question I  
23 guess that remains to be resolved is did they create  
24 information specifically for the department of labor  
25 investigation, meaning did -- or did he collect

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1 information and then use that information he collected  
2 to create the reports.

3 So basically did he use Kronos beyond just  
4 typing a key button the keyboard and create the  
5 spreadsheet, or did he actually collect data and  
6 information and then use that to do his whatever you  
7 were provided.

8 MR. TOSTRUD: Okay.

9 THE SPECIAL MASTER: According to as far as  
10 UMC knows, as far as Dean knows, and they are going to  
11 verify by next Thursday, there was no internal  
12 collection done in relation to the department of labor  
13 investigation. Right, Counsel Witty?

14 MS. WITTY: Correct.

15 THE SPECIAL MASTER: Do you have any  
16 objection to this?

17 MS. WITTY: No.

18 THE SPECIAL MASTER: Enter this.

19 (Exhibit 7 was marked  
20 by the Certified Court Reporter.)

21 THE SPECIAL MASTER: Just for my own  
22 education from an UMC perspective, from timing,  
23 departments of labor contacted you. As far as you  
24 know, they didn't do anything. I mean, UMC didn't  
25 collect anything or collect any information to

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1 provide. They just provided summary or whatever to  
2 the department of labor in relation to the  
3 investigation?

4 MS. WITTY: And it's purely upon the request  
5 of the department of labor investigator the  
6 information was collected or the spreadsheet was  
7 created.

8 THE SPECIAL MASTER: Created. Not collected.  
9 Created.

10 MS. WITTY: Right.

11 THE SPECIAL MASTER: Much different.

12 MS. WITTY: Yes.

13 THE SPECIAL MASTER: So okay. I'd like you  
14 to talk to UMC's former IT individual to make sure  
15 that there is no initial -- that that is indeed the  
16 case.

17 The department of labor didn't request for  
18 any records?

19 MS. FOLEY: No, it was a very odd,  
20 informal --

21 THE SPECIAL MASTER: I'm not trying to imply  
22 or impute anything of any nature.

23 MS. FOLEY: I have to be careful what I'm  
24 saying too because --

25 THE SPECIAL MASTER: Let's go off the record

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1 for a second please.

2 (OFF RECORD.)

3 THE SPECIAL MASTER: Back on the record. As  
4 I understand it, was there any informal or otherwise  
5 collection done by UMC to collect information in  
6 relation to the department of labor investigation?

7 MS. FOLEY: My understanding is there was  
8 some sort of chart assembled with some kind of wage  
9 information entered into a spreadsheet by hand, a  
10 little bit of data entry. That's it.

11 THE SPECIAL MASTER: No, I get the data entry  
12 piece. Who collected the data that went into the data  
13 entry? The data had to come from somewhere.

14 MS. FOLEY: It was payroll data.

15 THE SPECIAL MASTER: So if he wasn't doing  
16 the collection -- let's try it differently. You are  
17 right about the terminology.

18 The department of labor ran an investigation,  
19 formal or informal or otherwise. UMC -- all i'm  
20 trying to establish whether any information was  
21 collected, formal or otherwise in connection with this  
22 department of labor informal or formal investigation  
23 that was via e-mail, spreadsheets, data entry, that  
24 was not data created but data that was collected. The  
25 difference being they didn't -- they made a

1 spreadsheet, because when I read all the information  
2 that was provided to me, I didn't see any requests and  
3 I didn't see any data being provided.

4 What I'm trying to understand is was there  
5 any -- did UMC ever collect any data, formal or  
6 informal, in relation to this department of labor  
7 investigation, because based on the information that  
8 I've been provided, all I'm trying to establish is,  
9 and I believe it directly relates to the scope of the  
10 preservation, which is what I'm really trying to get  
11 at here, is was this information collected, and if it  
12 was collected, was it preserved and was it included  
13 within the search and the etc. So we can go through  
14 each one of those. That's all I'm interested in.

15 The first question is was there anything  
16 formally or otherwise collected?

17 MS. FOLEY: There was a chart made sort of --  
18 Kronos --

19 THE SPECIAL MASTER: -- because there is no  
20 need for me to put you on the spot.

21 MS. WITTY: The problem is I think what you  
22 are asking for is a repository. Wherever we go to  
23 locate information that was collected. What we have  
24 street a spreadsheet that was created, and from my  
25 understanding in discussion with payroll, it was they

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1 were given a list of names to access information in  
2 Kronos in the database where the information is held  
3 and they manually input that information into the  
4 spreadsheet.

5 THE SPECIAL MASTER: So at the end of the day  
6 do you have the spreadsheets -- I'm focused on I don't  
7 really -- I don't know enough about labor litigation  
8 to actually participate here.

9 What I'm interested in is whatever data  
10 you've got, e-mail, spreadsheets, payroll,  
11 conversations, whatever, it was data that was  
12 collected and created in this process in some fashion  
13 or another?

14 MS. WITTY: Yes, and that's all been  
15 preserved.

16 THE SPECIAL MASTER: That's all I want to  
17 know. That's my only concern here. The extent I'll  
18 get to -- yes?

19 MR. TOSTRUD: Two quick points. Number 1,  
20 Mr. Espinoza in sworn testimony in the deposition  
21 provided to you and we'll pick out these points and  
22 provide those specific pages and line numbers to you,  
23 but he testified that data was collected that he had  
24 multiple communications with the department of labor,  
25 that's number 1.

1           And number 2, a letter dated September 26,  
2   2012, from Ybelka Hernandez of the U.S. Department of  
3   Labor, this is UMC 000006 to 000007, indicates at  
4   paragraph 4, this is a letter from Mr. Espinoza to  
5   Ms. Hernandez, "I am proposing the following based on  
6   our own evaluation and discussion with the supervisors  
7   of the department in question," and then he proceeds  
8   to outline a proposed resolution of the department of  
9   labor investigation.

10           But Mr. Espinoza clearly lays out in this  
11   document that there has been an evaluation and  
12   discussion with supervisors of the departments in  
13   question, and I'm happy to submit this for the record,  
14   but plaintiffs firmly believe, based on our experience  
15   in this case, that there is a tremendous amount of  
16   information that exists with respect to the department  
17   of labor investigation.

18           THE SPECIAL MASTER: Well, let's be -- I  
19   think that they're not disputing that --

20           MR. TOSTRUD: So my understanding is that  
21   they are saying there is a spreadsheet?

22           THE SPECIAL MASTER: No, no. I think what  
23   they are saying -- correct me if I'm wrong. One  
24   second. Just so -- I'd like to enter this into  
25   evidence and we can go off the record once you enter



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1 it.

2 (Exhibit 8 was marked  
3 by the Certified Court Reporter.)

4 (OFF RECORD.)

5 THE SPECIAL MASTER: Back on the record.

6 I have a question for UMC that I'm a little  
7 confused about. When I read this letter that was  
8 entered as Exhibit Number 8. From UMC to Ybelka  
9 Hernandez, where it says:

10 "I'm proposing the following, based on  
11 our own evaluation and discussion with the  
12 supervisors of the departments in question."

13 And then "admitting," etc., etc.

14 To me, an evaluation implies that they looked  
15 at data or did something. I mean, am I  
16 misinterpreting what was meant by Mr. Espinoza? I'm  
17 trying to understand what did he -- by evaluating, if  
18 no collection was done informally, what was he looking  
19 at, what was he evaluating?

20 MS. WITTY: I think it's more of a position  
21 evaluation. I cannot speak to Mr. Espinoza's --

22 THE SPECIAL MASTER: Can you do me a favor.  
23 Go back to Mr. Espinoza and ask him specifically what  
24 he is referring to in his letter to clarify this  
25 because it does in some sense to me suggest or

1 indicate that there was data that was used and looked  
2 at and it could be of course you are correct, it is  
3 possible, Counsel, that that's not what was meant, but  
4 I do understand where plaintiff does seek further  
5 clarification.

6 I also want to know whether the prior IT  
7 person prior to Mr. Schaibley joining UMC was involved  
8 in any part of it, because for me, where this sort of  
9 in my head doesn't fully come together is that if they  
10 were able to use Kronos to gather data to then create  
11 the spreadsheet or data, who -- I'd be very -- I just  
12 want to understand what was done and to make sure that  
13 whatever was done was properly provided. All right?  
14 And then we'll see what he says. I mean, there's only  
15 so much that -- I assume that like you ran -- actually  
16 this is a returning from the department of labor, the  
17 next question I had, was when you actually responded  
18 to the document request, did you run searches? How  
19 did you respond to the document request? Because  
20 given the huge amount in generally. This is more for  
21 my own edification.

22 We established that there is probably likely  
23 repetitive -- a great deal of -- it's not 80 gigs of  
24 unique data. It's probably like 8 to 10 gigs of  
25 unique data or maybe 15, but the point I'm trying to

1 make is, when you got these document requests, did you  
2 actually run -- how did you search the data that was  
3 collected to identify what was responsive, given that  
4 the prior production effort that has been ongoing  
5 with -- which we just cleared up with the EnCase,  
6 nothing -- how did that happen? How did you actually  
7 find information, electronic or otherwise, and give it  
8 to them, just so I understand? Was it a concordance  
9 database. I'm just trying to determine what documents  
10 you actually determined to turn over. So they serve a  
11 document request. Document requests request  
12 information relating to UMC's -- let's return back to  
13 my hypothetical of my 90-hour a week and I got stiffed  
14 40 hours or 50 hours.

15 How did UMC go about trying to identify that  
16 information? Because -- off the record for a second.

17 (OFF RECORD.)

18 THE SPECIAL MASTER: Back on the record.  
19 Let's clarify the record because plaintiff raises a  
20 very important point. In the prior hearing it was  
21 represented by -- what's his name again?

22 MS. WITTY: Ernie McKinley.

23 THE SPECIAL MASTER: McKinley that all that  
24 had been collected to date was e-mail.

25 MR. GODINO: That was all he was asked to

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1 collect.

2 THE SPECIAL MASTER: It turns out  
3 Mr. McKinley was completely not involved or wrong,  
4 because what I received, just to be clear, from UMC  
5 was 1500 pages that identifies every file that was  
6 collected, and the e-mails came -- are in containers  
7 called PST and OST. So theoretically the e-mails  
8 should be at the most three pages, and I have 1500  
9 pages of files that were collected. There were Word  
10 documents, spreadsheets, e-mails.

11 MR. GODINO: Were those attachments to  
12 e-mails, though?

13 THE SPECIAL MASTER: No, these are in  
14 addition to e-mails. I was sitting here and looking  
15 at this the whole time and I probably missed one of  
16 the big pieces at the beginning. So let me rewind to  
17 offer a great deal of clarity.

18 It turns out that gentleman was completely  
19 wrong in every -- well, there are additional things  
20 that should have been collected and the BlackBerry  
21 server and there were other additional issues we have  
22 identified.

23 But with regards to what was collected, they  
24 collected, by my estimation, for example, for B  
25 Brannman, they collected for OST files, right, which

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1 have in them e-mails with attachments and etc., okay?  
2 They are embedded within this file -- 3 OST files, so  
3 that probably has hundreds if not thousands of  
4 attachments in those OST files. Some of them are  
5 pretty big.

6 Then we have one PST file on top of that. So  
7 you have those four files, and then you have upwards  
8 of about I think I counted about 400 or 500 Word  
9 documents and spreadsheets, in addition to, and on top  
10 of that you have his entire Internet history, which  
11 was -- the I might be able to realize people record  
12 everything, and probably I should realize that.

13 And we also have all the Adobe PSTs, every  
14 PDF document. On top of that -- I want you look into  
15 if it can read SAP data, because there are SAP data  
16 files. I'm assuming it can at least be searched  
17 because it's a binary file, but there's actual DAT  
18 files for the SAP as well.

19 Then there are like lots of encrypted files,  
20 which takes me to a question I have for Dean.

21 What do you do with the encryption files if  
22 you don't have a key? How is he going to read them?

23 MR. SCHAIBLEY: To be honest with you, I  
24 didn't know that there were any encryption files.

25 THE SPECIAL MASTER: There are encryption

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1 files.

2 MR. EDMONDSON: I believe so.

3 MR. SCHAIBLEY: If there were encrypted  
4 files, those were encrypted by each of --

5 THE SPECIAL MASTER: Okay. Well, then I want  
6 UMC to figure out every one of those files and get an  
7 encryption key so they can be searched. I mean -- I  
8 don't know any other -- I'm sorry that they were -- I  
9 fully recognize that this will be work but at the end  
10 of the day there is a responsibility to collect the  
11 information. If the user decides to encrypt the files  
12 it doesn't mean that they are not entitled to have  
13 them searched, and so we need -- what he can do to  
14 speed this up, you can run an end case, a report to  
15 identify every encrypted file, give him that report as  
16 an exported Excel spreadsheet so that way he doesn't  
17 have to waste his time to find them.

18 Then you can go figure out -- because you  
19 have Kryptos systems in there.

20 MS. WITTY: I apologize. Could we take a  
21 short break? I just need to run to the restroom.

22 THE SPECIAL MASTER: Is it okay if we keep  
23 going for like two minutes?

24 MS. WITTY: Thank you.

25 (Ms. Witty exited the proceedings.)

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1 THE SPECIAL MASTER: So I want to make --  
2 first returning back to what we were talking about,  
3 that is what was collected.

4 MR. GODINO: Do we have an idea when?

5 THE SPECIAL MASTER: What you are going to  
6 get on the chain-of-custody paperwork when you get the  
7 new one, it will say on this day, on this time, these  
8 many files. You will find it to be -- I think all  
9 that's really happened, there has been some  
10 communication errors, but we're going to create change  
11 of custody for each custodian. It actually says these  
12 are how many files were copied, this is the day, this  
13 is the time. Everything was done properly with the  
14 right switches and everything in Robocopy.

15 Unfortunately, the gentleman that was at the  
16 last hearing, he was just wrong in every way, shape or  
17 form as to -- anyway, the point being that that was  
18 collected, but in their collection there were  
19 additional issues that we've identified which are  
20 there is encrypted files, there were error files in  
21 the encryption. So they are going to work to figure  
22 out -- I should have done this at the beginning and I  
23 do apologize. That's why in the beginning I spoke to  
24 them about the errors I found in their collection.

25 Because I don't want to turn over their

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1 collection because it has every filename and every  
2 piece of detail, so I would rather them give you this  
3 is what was collected rather than the filenames etc.  
4 They collected word perfect documents, RAR files, ZIP  
5 files, but my point is, the other issue with the  
6 collection is in this collection they created ask that  
7 they encrypted these files, and you can't actually  
8 search it until they are decrypted. Right?

9 The rolling production on a going forward  
10 basis that we will establish will be a search of the  
11 universe for that custodian. Are you with me?

12 MR. GODINO: Yes.

13 THE SPECIAL MASTER: Which will include their  
14 e-mails. One custodian had 25 e-mail. And e-mail  
15 archives. Which each one probably had hundreds if not  
16 thousands of files and attachments in e-mails which is  
17 what my point is from earlier I wanted them to de-dup  
18 it so they didn't end up -- well, two reasons. One,  
19 I'm sure they don't want to do a doc review of the  
20 exact same files 20 times, and you don't want to read  
21 20 of the exact same file.

22 So that is going to happen, but before that  
23 can happen, I need to get the encryption keys.

24 MR. GODINO: I understand.

25 THE SPECIAL MASTER: That turns back to what



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1 we were originally talking about which was the  
2 department of labor informal investigation. So now  
3 you understand the universe of what we have for  
4 Mr. Espinoza, which includes all of his e-mail, his  
5 WordPerfect documents, his Word documents, whatever  
6 they have his script went and grabbed, and he did more  
7 than that. That script, I have several questions --

8 MR. GODINO: If he created those documents  
9 before they did the actual collection --

10 THE SPECIAL MASTER: I can tell you  
11 exactly when --

12 MR. GODINO: -- some of those documents may be  
13 done.

14 THE SPECIAL MASTER: That's a separate --  
15 that's an issue for Monday, and you will get --

16 MR. GODINO: Because we requested documents  
17 back in January of 2013. I would be interested in  
18 knowing when they actually started collecting --

19 THE SPECIAL MASTER: Wait for counsel. I  
20 suspect in chain of custody that information is  
21 included because it is only reasonable to state when  
22 you acquired the information.

23 (Ms. Witty re entered the proceedings.)

24 THE SPECIAL MASTER: Counsel Witty, great  
25 timing. One of the questions or concerns which I told

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1     them we're tabling to Monday is when the collection  
2     occurred.

3             So when did you serve your document?

4             MR. GODINO:   January 23rd.

5             THE SPECIAL MASTER:   So plaintiff served it  
6     January 23rd, and --

7             MR. SCHAIBLEY:   We received an e-mail on  
8     April 9th to -- with the list of custodians to collect  
9     and the collection began on April 10th.

10            THE SPECIAL MASTER:   This was the August one  
11     that was done, that's the one I got.

12            MS. FOLEY:   Yes.

13            MR. SCHAIBLEY:   Yes.

14            THE SPECIAL MASTER:   But you did two, April  
15     and August, right?

16            MR. SCHAIBLEY:   Yes.

17            THE SPECIAL MASTER:   So I'd like --

18            MR. SCHAIBLEY:   The August one was only the  
19     5.

20            THE SPECIAL MASTER:   The 5 which will now be  
21     the 6.  Now, I would like you to provide me the text  
22     files, the output -- now that I've within the script  
23     myself, for all 26 that were done in April so I can  
24     see the actual outputs.

25            But the point is that you will get all that

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1 in the chain of custody form once it's updated. To be  
2 clear, I expect it to say we collected these  
3 custodians information on two occasions, once here on  
4 this day we acquired this many files, in August, this  
5 many files, and we got them -- I was provided by  
6 counsel witty with a spreadsheet that was extremely  
7 helpful in figuring out what actually the names meant.  
8 Do you remember the name of that file, Counsel?

9 MS. WITTY: The full directory listing.

10 THE SPECIAL MASTER: So if that wasn't clear,  
11 the actual scope of what was collect dead was much  
12 more extensive than what was represented. It is all  
13 of their e-mail as it was at the time I believe both  
14 in April and in August. Is that correct?

15 MR. SCHAIBLEY: That's correct.

16 THE SPECIAL MASTER: I've only verified  
17 August but based on what I've seen in August and I'm  
18 assuming April will be the same, it is literally all  
19 the way down to what is in the person's Internet  
20 cache.

21 It's not a forensic duplicate copy, but it  
22 was whatever was in their local profile.

23 MR. TOSTRUD: May I turn to another  
24 big-picture question relating to Mr. McKinley's  
25 testimony or statements.

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1 Mr. McKinley stated there were no backups at  
2 the March 10 hearing.

3 THE SPECIAL MASTER: Let me be clear. Dean's  
4 specialty ask in the collection and the enterprise  
5 mail server, not the BlackBerry or the backups. That  
6 person will be here on Monday.

7 MR. TOSTRUD: Okay.

8 THE SPECIAL MASTER: We've gotten and you've  
9 received and you'll review, if you look, he was also  
10 completely wrong there, but you will review and I  
11 believe it was entered as Exhibit Number --

12 MR. TOSTRUD: Is this the backup policy?

13 THE SPECIAL MASTER: Yes. If you turn to  
14 page number -- I don't know. Just turn -- and you  
15 will see they give you an example of whether is  
16 actually backed up and the time is actually included  
17 as well and the cycles and all of the details.

18 MR. TOSTRUD: Okay.

19 THE SPECIAL MASTER: Counsel, you wanted --

20 MS. WITTY: I think part of my confusion was  
21 with regard to archiving of e-mails, not necessarily  
22 backup of the system.

23 THE SPECIAL MASTER: But you don't  
24 actually -- sorry.

25 MS. WITTY: There is no archiving system.

1 THE SPECIAL MASTER: Mr. Schaibley, he  
2 established earlier that there is no archiving  
3 platform at UMC currently. They are deploying or in  
4 the process of deploying I believe is it's called  
5 Simpana or CommVault they are in the process of doing  
6 that but at the time of question there was no  
7 archiving of e-mail.

8 But turning back to our original premise,  
9 which is, if the collection -- so they collected these  
10 users like the executive assistants, I don't know if  
11 they collected all of them or not, but if they didn't  
12 collect them all, there is -- which we'll all  
13 hopefully figure out by Monday can you get us that  
14 information as to whether or not you collected the  
15 executive assistant's that are for Doug Spring --

16 MR. SCHAIBLEY: Yes, I did. They were in the  
17 original 26, Claudette.

18 THE SPECIAL MASTER: We'll just double-check  
19 so that way we don't have any -- so if there are  
20 custodians who didn't fall within that group, based on  
21 their backup policies as I read it then they weren't  
22 necessarily -- the data might not be there today  
23 basically based on the way their backup system is set  
24 up, as I understand it, but I only got it a day and a  
25 half ago, so I was writing it out this morning.

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1 MR. TOSTRUD: Are the policies that you put  
2 in place from this point forward?

3 THE SPECIAL MASTER: Thank you. So with  
4 regards to preservation going forward, he was also  
5 wrong. So thank you.

6 So as to preservation, the way the script was  
7 actually written wasn't at all as he described it.  
8 What happened is he ran Robocopy for everything in  
9 this person's profile, then they created on the server  
10 a separate stand-alone server that they still have  
11 today for each user this directory.

12 So the evidence still exists for each one of  
13 them. Does that make sense?

14 MR. TOSTRUD: Uh-huh.

15 MR. GODINO: (Nodded head up and down.)

16 THE SPECIAL MASTER: So the only issue we  
17 have and then to put it in context and again I  
18 apologize for -- because I spent so much time with  
19 this and I apologize there was a huge oversight on my  
20 part. When we were having the conversation earlier on  
21 about the e-mail trimming with the e-mails themselves,  
22 the PST OST that had to be scanned and repaired.  
23 Remember that whole conversation earlier on?

24 MR. GODINO: Yes.

25 THE SPECIAL MASTER: That was within the

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1 collection, and my point was if the collection for  
2 that information wasn't done or had problems, right,  
3 it might mean that the material isn't available  
4 anymore.

5 MR. GODINO: Right.

6 THE SPECIAL MASTER: You are going to get a  
7 copy of the error logs, which you have already been  
8 provided, which will detail out exactly what happened  
9 for each one of those. Does that make sense?

10 MR. GODINO: Yes.

11 THE SPECIAL MASTER: So you will have a  
12 chance to look at it and then on Monday we'll be able  
13 to speak about it if you have questions after you have  
14 had a chance to analyze the information. Does that  
15 make sentence?

16 MR. GODINO: Yes, sure.

17 THE SPECIAL MASTER: You will get the error  
18 logs. The error logs represent -- so why don't you  
19 recap just one more time what you did for the e-mail.

20 MR. EDMONDSON: For the e-mail itself?

21 THE SPECIAL MASTER: Scan and repair.

22 MR. EDMONDSON: I ran the scan on all of the  
23 PST and OST files.

24 THE SPECIAL MASTER: All being everything  
25 that was collected for the five custodians.

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1 MS. FOLEY: In August.

2 THE SPECIAL MASTER: In August.

3 MR. EDMONDSON: Correct.

4 THE SPECIAL MASTER: On August 24th?

5 MR. EDMONDSON: Yes.

6 THE SPECIAL MASTER: Just those, okay.

7 MR. EDMONDSON: Just those.

8 THE SPECIAL MASTER: And then what happened.

9 MR. EDMONDSON: And all of them generated log  
10 files during the repair process. Two of them could  
11 not be repaired and required that additional data be  
12 removed from them before they could be repaired  
13 correctly.

14 THE SPECIAL MASTER: And that project is  
15 called trimming.

16 Mr. Pixley, are you there?

17 MR. PIXLEY: No, I'm here.

18 THE SPECIAL MASTER: Mr. Pixley, did you get  
19 the log?

20 MR. PIXLEY: I did.

21 THE SPECIAL MASTER: So you'll be able to  
22 analyze that and if you have any issues or questions  
23 we can discuss it on Monday?

24 MR. PIXLEY: Yes.

25 THE SPECIAL MASTER: Good. The whole point



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1 is, what that details out, my concern and what I'm  
2 getting at is because it was the collection was done  
3 in a way that may or may not be forensically sound  
4 enough because of the number of errors in the log  
5 file, there could be an issue because there are no  
6 backup tapes as to whether the material is available.

7 MR. GODINO: Notwithstanding the preservation  
8 letters there is some material that may be gone.

9 THE SPECIAL MASTER: Yes, possibly, which is  
10 the whole scan and repair log files, which we're going  
11 to discuss on Monday once Mr. Pixley and you guys have  
12 had a chance to look at it, we can have a more cogent  
13 conversation as a group. Does that make sense?

14 MR. GODINO: Yes.

15 THE SPECIAL MASTER: Before I can have that  
16 conversation, I want to also have a conversation with  
17 their backup person, there BlackBerry server, because  
18 if they have the backup tapes, then at least if we  
19 know that it didn't work or there are issues, we have  
20 another source we can look at.

21 MR. GODINO: Right.

22 THE SPECIAL MASTER: As a back-up if  
23 necessary. And if reasonable. It's a function of  
24 figuring out how much information, how much had to be  
25 trimmed, and what the whole -- understanding what the

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1 data set looks like as a composite, and according to  
2 whatever your ESI experts determine, and then I will  
3 also weigh in at that point as well as to what would  
4 be appropriate or not.

5 My concern is, and I will let the record  
6 reflect this, is that there was a lot of trimming and  
7 it is a bit of -- and trimming being as was just  
8 explained cutting the e-mail file down so it can be  
9 actually used and processed and ingested, and for some  
10 of the e-mails PST OST files. I haven't extensively  
11 reviewed the log files, which is some exciting work  
12 for the weekend, but that is a point of concern for  
13 me, but that is just the e-mail piece as I mentioned  
14 before, everything else is there, the Word documents,  
15 the Excel spreadsheets, the Word documents, the  
16 WordPerfect documents, the Lotus notes, you name it,  
17 they collected it.

18 MR. TOSTRUD: And all of that in addition to  
19 the e-mail will be part of the rolling production?

20 THE SPECIAL MASTER: Yes, of course. The  
21 rolling production for an individual custodian will  
22 represent the composite of their entire collection  
23 that at least for the six that I reviewed for the five  
24 that I reviewed from August and I assume that they  
25 will provide me the April and you'll remove or de

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1 duplicate whatever at the very least the duplicative  
2 files between the collections, right?

3 MR. EDMONDSON: I believe was that actually  
4 (inaudible) -- (asked for clarification.)

5 THE SPECIAL MASTER: Off the record.

6 (OFF RECORD.)

7 THE SPECIAL MASTER: Back on the record --  
8 off the record.

9 (OFF RECORD.)

10 THE SPECIAL MASTER: Back on the record. In  
11 the custodian interviews you will receive hopefully  
12 before Monday there is repeated dialogue about iron  
13 mountain by all the custodians. What isn't clear to  
14 me is from a security and exchange and that  
15 perspective, who handles iron mountain within UMC?

16 MR. SCHAIBLEY: It does not come through the  
17 IT security department.

18 THE SPECIAL MASTER: Does it come through IT?

19 MR. SCHAIBLEY: I believe it does.

20 MS. WITTY: From my understanding, the backup  
21 tapes, so the individuals within the server team that  
22 participate in the backup go through iron mountain.  
23 The custodian --

24 THE SPECIAL MASTER: But that person will be  
25 here on Monday?

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1 MS. WITTY: Yes. We'll have that  
2 information, yes.

3 THE SPECIAL MASTER: But we'll be able to  
4 call somebody on Monday?

5 MS. WITTY: Yes. The actual custodians that  
6 were interviewed don't send any electronic information  
7 other than Claudette -- electronic information other  
8 than Claudette, who did the discs.

9 The other files, the grievance files, those  
10 are all --

11 THE SPECIAL MASTER: Did any of the paper  
12 documents that they referenced were being stored there  
13 have any -- it's good first that they are being  
14 preserved. Lets recognize that they are being  
15 preserved. The next questioning I obviously want to  
16 know is is there any -- have you been able to  
17 discern what -- since I couldn't tell from what you  
18 told me, if it had anything to do with -- there's no  
19 date ranges, so I have no idea what dates they are  
20 storing data or files or paperwork from. I have no  
21 understanding of what -- the scope of the paperwork  
22 they are actually storing there, if it's copies or  
23 originals or -- so if you could kindly go back and  
24 inquire as to when they say that they are using iron  
25 mountain, say when or whether you are putting iron

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1 mountain because all I'm interesting in is --

2 MS. WITTY: That that information was  
3 reviewed --

4 THE SPECIAL MASTER: That it was reviewed  
5 accordingly and that they are destroying the originals  
6 and you saw copies or vice versa or that it wasn't,  
7 but I need more than we sent it to iron mountain, for  
8 multiple reasons.

9 MR. TOSTRUD: For purposes of efficiency from  
10 plaintiffs standpoint I think it would be very helpful  
11 to know if schedules and things like that are stored  
12 at iron mountain --

13 THE SPECIAL MASTER: We'll go off the record  
14 really quick.

15 (OFF RECORD.)

16 THE SPECIAL MASTER: So on the record really  
17 quickly, our objective and intent is by Monday that  
18 plaintiffs will be provided the custodian interviews,  
19 will have had the chance to look at them and review  
20 them, counsel for UMC will have a chance to circle the  
21 wagons to identify what was stored in iron mountain  
22 and how it was stored and give further parameters to  
23 that. If they are able to, on Monday, we will answer  
24 the questions that counsel for the plaintiff raise,  
25 which were specific to -- what was the substance of

1 what they were sticking in iron mountain and is that  
2 or has that been collected or reviewed by counsel for  
3 UMC and if it has just to clarify that.

4 So if necessary we'll come up with a list of  
5 questions and that will be presented to each of the  
6 custodians if necessary.

7 Furthermore, we are now talking about the  
8 amended stipulated ESI protocol and I wanted to  
9 discuss with the parties different pieces of this to  
10 understand now that I have a much firmer grasp of  
11 everything that's moving, I wanted to just touch on a  
12 couple of things.

13 The first being number 4, document image  
14 formats, it says, "The parties shall meet and confer  
15 to the extent reasonably necessary to facilitate the  
16 import and use of the produced materials," which would  
17 be, hopefully, they will come in the rolling  
18 production, "with commercially available document  
19 management or litigation software such as Summation or  
20 Concordance."

21 I was under the impression you were using  
22 something else. Is that -- plaintiffs, am I wrong?

23 MR. FORREST: We're -- our review platform is  
24 IConnect, but we are perfectly happy with the  
25 Concordance stat file.

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1 THE SPECIAL MASTER: Okay. So you are -- I  
2 just want to make sure --

3 MR. FORREST: Stat file, OST file.

4 THE SPECIAL MASTER: And you provided --  
5 let's be clear. You don't specify what fields you  
6 want for a Concordance file. You just say a "load"  
7 file.

8 MR. FORREST: I believe those fields are  
9 specified in paragraph 13.

10 THE SPECIAL MASTER: So everybody is okay  
11 with that? Yes?

12 MR. GODINO: Yes.

13 THE SPECIAL MASTER: I want to make sure  
14 because now that we've actually figured out what we're  
15 going to get to, the encryption and the other pieces.

16 MR. FORREST: We would definitely prefer  
17 single-page tiffs. Here it says single or multi.  
18 Single would be our preference.

19 THE SPECIAL MASTER: There might be some  
20 give-and-take here.

21 MS. WITTY: We had previously discussed not  
22 doing tiffs as it's --

23 THE SPECIAL MASTER: So this is my question:  
24 What if they just -- are you wed to the tiffs?

25 MR. FORREST: Well, to the extent they are

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1 producing natives, I think we need a placeholder with  
2 a Bates stamp.

3 MS. WITTY: We have previously with the  
4 attempted production I'm not going to argue about on  
5 compliance, we had agreed to doing the placeholder  
6 image.

7 THE SPECIAL MASTER: Right, but it's not in  
8 here. That's why I'm talking to you about it now.

9 MS. WITTY: Right. That's what we are trying  
10 to iron out. There is no need for the tiff as long as  
11 there is a place holder, the native.

12 THE SPECIAL MASTER: That is fantastic, but  
13 that is not what you guys submitted to the judge. So  
14 what I need to happen is plaintiffs --

15 MR. FORREST: Amended.

16 THE SPECIAL MASTER: So what I do need to  
17 happen is that I do need you to change this so that we  
18 then have complete agreement about -- and we will  
19 finalize the language on Monday but I would like you  
20 to adjust this so it is reflective of what is --

21 MR. FORREST: That's fine.

22 THE SPECIAL MASTER: Because that will  
23 also -- takes me to my question -- the next one,  
24 filename and conventions. Obviously that needs to be  
25 changed as well. Any thoughts?



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1 MR. FORREST: I don't think we have Bates  
2 numbers that can't be included in the filename, and I  
3 think the convention looks all right. It's basically  
4 going to be for the first page.

5 THE SPECIAL MASTER: I think so too. So can  
6 you adjust that.

7 MR. FORREST: Yes.

8 THE SPECIAL MASTER: I'm just asking because  
9 we had a whole conversation last time when you guys  
10 submitted this and I was like maybe I missed -- maybe  
11 you guys couldn't agree but I thought when we left  
12 everybody had agreed.

13 So then presentations, decks, spreadsheets,  
14 pictures and images, that needs to be adjusted as well  
15 because they are coming in native.

16 MR. FORREST: Everything is coming in native,  
17 is my understanding.

18 THE SPECIAL MASTER: Right. The only reason  
19 I'm asking is this is what was submitted to the Court.  
20 Go off the record for a second.

21 (OFF RECORD.)

22 THE SPECIAL MASTER: Back on the record.

23 Then obviously 7 A, part of 7 A should be  
24 adjusted.

25 MR. FORREST: Yes.

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1 THE SPECIAL MASTER: Unless either party has  
2 an objection, speak up, please, and adjust it to  
3 reflect what we have agreed upon with the natives.  
4 This will also allow both sides to save some time and,  
5 more importantly, money.

6 With regards to the hard copy documents, I  
7 thought that was fine. Anybody have any issue with  
8 this? I don't know why you didn't want them OCR'ed.

9 MR. TOSTRUD: Can you give us just a second  
10 on that.

11 (Conference between counsel.)

12 THE SPECIAL MASTER: I don't know if you guys  
13 are getting a lot of discovery. If you are, you  
14 should speak as well.

15 MS. WITTY: We would ask it be in the same  
16 form we produce it.

17 MR. FORREST: Everything should come with a  
18 text file and if it's hard copy it should be OST CR,  
19 if it's electronic it should be slack Ted.

20 MR. GODINO: If defendants don't object, we  
21 can add the OCR.

22 THE SPECIAL MASTER: I'm writing it down.

23 MS. WITTY: That's not an issue, yes.

24 THE SPECIAL MASTER: I mean, if they are  
25 scanning it, they can just click another button and

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1 it's OCR, so...

2 For color, I'll leave that as is.

3 MR. FORREST: It's superfluous at this point.

4 THE SPECIAL MASTER: I assumed there was some  
5 reason you left it in. If it's not, I would recommend  
6 removing it.

7 There is one thing I want to make clear.

8 This protocol will apply to both parties now.

9 Counsel, this is important. This protocol I'm going  
10 to request applies to both parties. So if you end up  
11 producing, you are going to have to provide OCR --

12 MR. GODINO: That's fine.

13 THE SPECIAL MASTER: Because if you are  
14 turning over information and receiving it --  
15 duplicates, this is a question that I have. This  
16 comes down to -- this is really for plaintiffs. You  
17 need only to have produced a single copy of that  
18 document. I need to understand something. Does  
19 document mean e-mail too?

20 MR. FORREST: Well, it does go on and talk  
21 about multiple inconsistent electronic. Also on  
22 pages -- on 16 to 17.

23 THE SPECIAL MASTER: I scratched those  
24 already, but yes.

25 MS. WITTY: Our druthers would be to

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1 de-duplicate on a custodian basis, and we actually  
2 came to an agreement earlier that's not reflected  
3 here, but this is an e-mail agreement as to what  
4 fields would be used for de-duplication of e-mail.

5 THE SPECIAL MASTER: That was not included --

6 MS. WITTY: Yes.

7 THE SPECIAL MASTER: But it wasn't included  
8 in this. So again I got confused.

9 So there is an e-mail that I read that you  
10 guys were agreeing as to how de duplication was going  
11 to happen. That is not in here.

12 MR. FORREST: That is correct on both counts.

13 THE SPECIAL MASTER: So plaintiff I'm going  
14 to look to you guys to make these changes.

15 Don't forget this is an FYI for number 12 to  
16 make sure the reference is right, paragraph 2.

17 MR. GODINO: Paragraphs.

18 THE SPECIAL MASTER: Yes. I didn't have any  
19 problem with the production media, the only question I  
20 have you say if the producing party encrypts or locks  
21 the production, I'm going to require now the scope --  
22 just to be clear, what they have collected is  
23 expensive and I would rather err on the side of  
24 caution and just have them provide you, unless there  
25 is any objection, put it on an encrypted disc and ship

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1 it that way because it is literally -- either that or  
2 they are going to have to search it for -- it's your  
3 call?

4 MR. FORREST: You mean they encrypt the  
5 production media?

6 THE SPECIAL MASTER: Yes.

7 MR. FORREST: That's fine.

8 THE SPECIAL MASTER: Because we're dealing  
9 with healthcare, better safe than sorry.

10 Do you have any objection to that?

11 MR. EDMONDSON: No.

12 THE SPECIAL MASTER: So then can you adjust  
13 the -- so just be like all production will be done on  
14 encrypted discs unless both parties agree and concept  
15 in writing or something or you could say that might  
16 contain -- however you want to phrase it. Just we'll  
17 go through -- now metadata.

18 MR. FORREST: I guess there should also be an  
19 LP T file.

20 THE SPECIAL MASTER: Do you have any -- do  
21 you want to raise that again?

22 MR. FORREST: There should be an LP T file.  
23 I mean, it's going to be a fairly simple LP T file.  
24 There's only one image per...

25 THE SPECIAL MASTER: Do you have any problem?

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1 MR. FORREST: Producing an LP T file for the  
2 tiffs?

3 THE SPECIAL MASTER: Explain exactly what you  
4 want in the LP T.

5 MR. FORREST: We'll furnish it.

6 THE SPECIAL MASTER: He will furnish you the  
7 LP T how street that.

8 MR. EDMONDSON:

9 MR. FORREST: ECapture and crank it out it is  
10 a check box.

11 THE SPECIAL MASTER: We'll revisit -- once  
12 plaintiffs give it to both side the amended protocol,  
13 we'll then review it again on Monday. I just got very  
14 confused, so I wanted to literally go through it with  
15 your guys, so that way --

16 Now metadata, anybody -- the met data?

17 MR. FORREST: It should be the new order,  
18 yes.

19 THE SPECIAL MASTER: I see it all, but you  
20 are getting the native files; right? Like began  
21 attach, began doc.

22 MR. FORREST: If they're -- those metadata  
23 fields were suggested by Mr. Edmondson, and we added a  
24 few more. They are going to extract them anyway.

25 THE SPECIAL MASTER: Oh, they are? Okay.

1     Fantastic.

2                 The search terms, can someone please provide  
3     me a list of search terms?

4                 MS. WITTY: We can do that, include the  
5     initial terms.

6                 THE SPECIAL MASTER: So that way we have the  
7     new list locked and we're good, and if you could, just  
8     attach it to the order so there is no confusion at  
9     all, but I want to notice that it is the first as  
10    plaintiff pointed out this is the -- actually don't  
11    attach it to the order, now I think about it.

12                I want to make it clear, though, that these  
13    search terms are the first in your discussion with the  
14    other side and based on what the results are you will  
15    have further conversations.

16                MS. FOLEY: Once the results are reviewed,  
17    yes.

18                THE SPECIAL MASTER: Privilege logs are made  
19    and conversations are had. We're just trying to get  
20    there.

21                Okay. Databases, this is fantastic because I  
22    almost forgot about it. Microsoft access.

23                MS. FOLEY: Uh-huh.

24                THE SPECIAL MASTER: Mr. Schaibley, can you  
25    please tell me how Mike soft access is handled to the

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1 best as you know how. If you don't know, say you  
2 don't know and let counsel --

3 MR. SCHAIBLEY: To the best of my knowledge,  
4 we no longer utilize any access databases, we no  
5 longer support any access databases.

6 THE SPECIAL MASTER: Counsel, with Mike soft  
7 access?

8 MS. WITTY: Yes.

9 THE SPECIAL MASTER: Did you get any further  
10 clarification?

11 MS. WITTY: I did. James Mumford is the only  
12 custodian who mentioned Access. He has not used it  
13 similar as it's reported at UMC during the relevant  
14 time frame he literally said he hadn't used it in the  
15 past seven years.

16 THE SPECIAL MASTER: And the custodian  
17 interview someone mentioned they used MS Access.

18 MS. WITTY: He likes it.

19 THE SPECIAL MASTER: He likes it.

20 MR. FORREST: Well, that's one person.

21 THE SPECIAL MASTER: Getting past personal  
22 biases.

23 (RECESS TAKEN 3:10 P.M. TO 3:18 P.M.)

24 THE SPECIAL MASTER: Back on the record.  
25 Databases, I understand the databases. This takes me



1 to my -- when we finish this, I'm going to ask UMC to  
2 provide a list of all the file types because there is  
3 a litany of file types that you may not even be  
4 interested in getting hits on, like DOL believe it or  
5 not might also trigger on a lot of nonresponsive stuff  
6 given what a lot of people are looking at on the  
7 websites. You can be surprised. You never know what  
8 words are embedded, like American Idol, I-d-o-l. So  
9 you just don't think about it and then all of a sudden  
10 you are reading like 15,000 American idol webpages  
11 because you asked for DOL. So, you know, it's --

12 On Monday I want a list of all the file types  
13 provided and we're going to enter it as an exhibit as  
14 well, so print a copy. So that way you understand  
15 when you are going to get a custodian these are all  
16 the different file types that sit within that  
17 universe.

18 So and then that will sort of take care of  
19 the database thing because you will see the -- there  
20 is not really that many database applications or  
21 files.

22 So unless anybody has any comments for  
23 database or wants to and it at all? Plaintiff, are  
24 you okay with it?

25 MR. FORREST: With some --

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1 THE SPECIAL MASTER: Speak now or forever

2 hold your piece. What part? Is it okay?

3 MR. FORREST: I'm not crazy about it. I

4 think what they are doing with Kronos, if they could

5 produce an adequate report in electronic format that's

6 fine. To the extent they can't.

7 MR. GODINO: I think we've already litigated

8 that issue. This would have applied to Kronos.

9 THE SPECIAL MASTER: That was my whole

10 question. You are going to get a list of all the file

11 types. Let's assume none of them are Kronos.

12 According to this you get the entire database or

13 report.

14 So when you get the list of file types, if

15 you can also please identify the applications, I think

16 it does it for you automatically, I think it does.

17 MR. FORREST: Some of them.

18 THE SPECIAL MASTER: Some of them. At least

19 enough that you can Google the rest if you need to.

20 We'll talk about it on Monday. I want you to

21 look at it.

22 MR. FORREST: We're not going to have gone

23 through that by Monday.

24 THE SPECIAL MASTER: You won't get it until

25 Monday. You can think about do I really want the

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1 whole database.

2 MR. FORREST: Normally I'm happy with an  
3 extract, depending upon how it can be normalized and  
4 so forth.

5 THE SPECIAL MASTER: For databases why don't  
6 you put a question mark staying to be determined on  
7 Monday.

8 MR. FORREST: Meets and confer.

9 THE SPECIAL MASTER: We're not going to meet  
10 and confer. We're going to have a conversation on  
11 Monday and make some decisions. If not we will have a  
12 phone conference, because I don't think UMC, they are  
13 going to evaluate the cost benefit ratio for their  
14 client as well.

15 Production of other electronic documents, it  
16 says you guys are going to meet and confer to agree on  
17 the form of any production of electronic documents  
18 other than the foregoing, which are databases,  
19 e-mails, word-processing documents, spreadsheets,  
20 presentations, image documents, and construction  
21 documents. I don't know how construction has to do  
22 with it, but I'll leave it in.

23 Is there other documents that might -- like  
24 filings maybe, electronic filings that are done?  
25 Records?

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1 MR. FORREST: PDF should probably be in  
2 there.

3 THE SPECIAL MASTER: You would think. But I  
4 don't know. Do you want to meet and confer about each  
5 file type or do you want to add more file -- because  
6 right now --

7 MR. FORREST: I mean, since everything is  
8 being produced as native, I think --

9 THE SPECIAL MASTER: I thought it was a moot  
10 point.

11 MS. WITTY: Yes.

12 MR. FORREST: Yes, I agree. I mean, the only  
13 conceivable thing I can think about if it's not  
14 precisely covered here, it's some form of native data  
15 or aggregated data this you cannot in fact read  
16 without --

17 THE SPECIAL MASTER: The reader.

18 MR. FORREST: Without the original  
19 application.

20 THE SPECIAL MASTER: So that might be the  
21 only situation you would want to address rather than  
22 all the other things, and I think it saves both sides  
23 money and time.

24 Okay. Acceptance of the protocol, I don't  
25 have any problem with that.

1           Redaction, I assume you guys covered how you  
2   want it.

3           Use of documents, "extract detection not be  
4   used in any proceeding as a substitute for the image  
5   of any document." Since we're doing native, is that  
6   an issue?

7           MR. FORREST: Well, I think, with the  
8   exception of impeachment material and  
9   cross-examination material, probably would be  
10   furnished as Bates stamped tiffs, right.

11          THE SPECIAL MASTER: Yes, but you would then  
12   produce them and enter them into evidence.

13          MR. FORREST: Enter the tiffs into evidence?

14          THE SPECIAL MASTER: Yes, you would do that  
15   in court, you would make a motion to the Court and  
16   provide it to the Court. They are not going to object  
17   to you turning over paper documents to the judge.  
18   Maybe they would, but the judge would say that's fine.  
19   Give it to me on a memory stick? And the judge will  
20   be like I don't have a USB reader on my computer, and  
21   the jury won't be able to see it, so I'll take it as a  
22   paper document, and the judge will be, oh, that's a  
23   great idea, and then everybody will be happy.

24          But I agree, you should put it in just to be  
25   safe.

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1 Privilege logs, I assume you guys had a  
2 conversation about privilege logs. Is that an  
3 accurate assumption.

4 MR. GODINO: Yes. I mean, we've been having  
5 ongoing discussions.

6 MR. TOSTRUD: We've met and conferred and we  
7 have an amended privilege log already.

8 THE SPECIAL MASTER: But as this production  
9 starts going, I need to know that you guys have some  
10 mechanism upon which a privilege log is being created  
11 request sufficient data from both sides that's not too  
12 unwieldy or burdensome and sufficiently substantive  
13 for you to make a motion if necessary.

14 MR. TOSTRUD: If not there already we're very  
15 close to reaching an agreement on that.

16 Is that fair?

17 MS. WITTY: Yes.

18 THE SPECIAL MASTER: It would be good if we  
19 got across the finish line by Monday or Tuesday, at  
20 least before the production starts.

21 Cost service, I don't have any problems with  
22 the rest of it. I didn't know if anybody has any  
23 issues, please let me know.

24 MR. FORREST: You mentioned Tuesday. Are you  
25 contemplating Monday may run over?

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1 THE SPECIAL MASTER: We seem to be a pretty  
2 good power group. We seem to have made decent  
3 progress. I'm thinking after Monday there will be  
4 enough work that we will meet again in a week and a  
5 half. My goal is that first production. Off the  
6 record.

7 (OFF RECORD.)

8 THE SPECIAL MASTER: On the record. I do  
9 commend counsel from both sides for both being  
10 cooperative and moving the ball forward which is  
11 actually good and nice. I'm not used to such  
12 civility. So it's a pleasant change. I know that  
13 might sound odd, but it is true.

14 The next thing that I wanted to touch upon  
15 now we've gone through this is I want to make sure we  
16 will crystal-clear -- and I want to make sure that you  
17 work here with Mr. Schaibley that you include the  
18 April and August file types. Are we clear? Because  
19 all I've seen is the August? You understand?

20 MR. EDMONDSON: I'll make sure that's what's  
21 on --

22 THE SPECIAL MASTER: And I will get the text  
23 files for the collection from April for myself. And  
24 what that allows me to do is validate everything  
25 that's coming through. Okay? Any questions there?

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1 Either side? Okay.

2 Mr. Pixley, do you have any questions?

3 MR. PIXLEY: No.

4 THE SPECIAL MASTER: Moving to what is the  
5 last group of questions that I have, this is mainly  
6 for Mr. Schaibley, are there any third party services  
7 that UMC uses to store documents or access documents  
8 or provide services that UMC doesn't store or control  
9 themselves at the time period in question.

10 MR. SCHAIBLEY: I don't believe so, no.

11 THE SPECIAL MASTER: Are you the person  
12 responsible for these? Would you be the person  
13 responsible or are there other people within the  
14 organization as well?

15 MR. SCHAIBLEY: To my knowledge, we don't  
16 have any. If we did have any, it would come through  
17 the security team.

18 THE SPECIAL MASTER: I would assume that you  
19 would have to approve them?

20 MR. SCHAIBLEY: Uh-huh.

21 THE SPECIAL MASTER: Okay.

22 To be clear, you do not allow Dropbox?

23 MR. SCHAIBLEY: No.

24 THE SPECIAL MASTER: You should then redo  
25 custodian interviews.



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1 MR. SCHAIBLEY: Awesome.

2 THE SPECIAL MASTER: Counsel, you will make  
3 the BlackBerry person either available on the phone or  
4 in person?

5 MS. WITTY: Uh-huh.

6 THE SPECIAL MASTER: Can an UMC user save  
7 their documents to a local user computer outside of  
8 their profile?

9 MR. SCHAIBLEY: Not outside of their profile,  
10 no. They would be under their -- the desktop.

11 THE SPECIAL MASTER: So if I log in and I go  
12 to "save as" I select "C colon/," can I do that?

13 MR. SCHAIBLEY: During the time frame in  
14 question, it may have been possible.

15 THE SPECIAL MASTER: But it was not the  
16 practice or --

17 MR. SCHAIBLEY: Correct; correct. By  
18 default, whenever it opens up it goes to My Documents,  
19 and the My Documents will -- is auto redirected to  
20 their home folder on a faster.

21 THE SPECIAL MASTER: Do you have this policy  
22 written anywhere so I could read it and understand it?  
23 Because when I read the custodian interviews and your  
24 collection script, sometimes I get a little confused.  
25 So if you have how it works or how it was working,

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1 that would be very helpful.

2 MR. SCHAIBLEY: Yes.

3 THE SPECIAL MASTER: So, as we mentioned  
4 before, the collection was fairly large and broad, and  
5 I'm just verifying right now that the way a user  
6 logged in to to use their computer, it wasn't that it  
7 automatically defaulted to save to the local drive,  
8 but it defaulted to save to the network file server or  
9 whatever. So that basically they couldn't store data  
10 on their local computer that wasn't being collected.  
11 Is that clear?

12 MR. GODINO: Uh-huh.

13 THE SPECIAL MASTER: So that was the purpose  
14 of the questioning.

15 Counsel, with regard to Mr. Mumford and his  
16 use of personal texting --

17 MS. WITTY: Yes.

18 THE SPECIAL MASTER: I'm a little perplexed  
19 as to -- I know we've established that there was  
20 wiping, they call it pushing a new image, but  
21 effectively deletion of everything that was there  
22 before. Did that also wipe his text messages that he  
23 sent to his wife?

24 MS. WITTY: He --

25 THE SPECIAL MASTER: Because I got a little

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1 confused when I read over how he handled text  
2 messages. Any light you could shed there?

3 MS. WITTY: I don't believe that the  
4 something out would have deleted the text messages.  
5 But he stated that he personally deleted his wife's  
6 text messages.

7 THE SPECIAL MASTER: Which is what led me to  
8 the question of besides why he was deleting them is  
9 that if it was being wiped, hopefully the BlackBerry  
10 person if you can just let them know this is something  
11 I'm going to want to understand in detail and if you  
12 could bring additional materials or exhibits to  
13 clarify these things or policies or anything, even of  
14 a technical nature, it would be very useful, because  
15 multiple custodians indicated that they used text  
16 infrequently but if they were wiping or how it was  
17 stored and pushed, and based on what was provided I  
18 wasn't really able to discern outside of what was  
19 imaged, and please also provide Mr. Brannman his first  
20 mobile device, the first smart phone to -- for imaging  
21 and inclusion as a -- if it was used during that time  
22 period, which I believe it was, and include that in  
23 your -- and I'd like that by next -- next week is  
24 getting a little busy -- how about the week after  
25 Monday? The result. That means I want it imaged and

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1 I want the messages pulled and also returning back to  
2 the mobile devices, were there any e-mail messages on  
3 the mobile devices when you looked at them?

4 MR. EDMONDSON: I would want to double-check  
5 but I am fairly certain there were.

6 THE SPECIAL MASTER: Can you get me the date  
7 ranges.

8 MR. EDMONDSON: Yes.

9 THE SPECIAL MASTER: You can tell the  
10 BlackBerry person that's coming I'm going to want to  
11 know what's synched and how it's synched, push-pull,  
12 how it works.

13 Is there anything you want to add, plaintiff?

14 MR. FORREST: Just wondered between the  
15 interaction between that --

16 THE SPECIAL MASTER: How about mobile? They  
17 are going to image it, look at the text messages for  
18 his other mobile device. Is there anything that you  
19 believe you would like to see included on his first  
20 mobile phone that's yet to be imaged.

21 MR. FORREST: Bruce.

22 MR. PIXLEY: Yes, I couldn't hear the  
23 question.

24 THE SPECIAL MASTER: The question was, we're  
25 going to image -- actually it won't happen till next

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1 week so if plaintiff will just write it down I can ask  
2 Mr. Pixley on Monday when he's here.

3 MR. TOSTRUD: Are we referring to  
4 Mr. Brannman's first phone?

5 THE SPECIAL MASTER: Yes. The image, the  
6 second phone.

7 You imaged the second phone; is that correct.

8 MR. EDMONDSON: Yes.

9 THE SPECIAL MASTER: They didn't image the  
10 first phone.

11 MR. TOSTRUD: Okay.

12 THE SPECIAL MASTER: And when the BlackBerry  
13 person comes he'll explain if there is each anything  
14 on it, but we'll image it anyway because maybe that's  
15 fragments and we'll re-touch on this with Mr. Pixley  
16 here on Monday quickly just to make sure.

17 Now, with regards to Mr. Spring,  
18 Mr. Schaibley I have a question for you:

19 In his custodian interview he references he  
20 had two computers. I've got really confused as to  
21 how -- the way I read it was terminal, but I don't  
22 know. So I was hoping you could clear up what  
23 constitutes a computer device for a custodian at UMC  
24 to start.

25 MR. SCHAIBLEY: Depending on their job --

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1 THE SPECIAL MASTER: I'm taking about Mr.  
2 Spring.

3 MR. SCHAIBLEY: As far as Mr. Spring, he  
4 would have a computer sitting at his desk in his  
5 office.

6 THE SPECIAL MASTER: And that would be his  
7 computer?

8 MR. SCHAIBLEY: That would be his computer  
9 that he uses. It's an UMC-issued computer assigned to  
10 him that he uses.

11 Because human resources has two different  
12 offices, we've get human resources in one building and  
13 human resources in a separate building, he would have  
14 an office in both locations, so he would need a  
15 computer in both locations.

16 THE SPECIAL MASTER: And your collection  
17 included both locations?

18 MR. SCHAIBLEY: Yes.

19 THE SPECIAL MASTER: And you will put in the  
20 chain of custody which ones they are?

21 MR. SCHAIBLEY: Yes.

22 THE SPECIAL MASTER: So that was also  
23 collected, both --

24 Now what about the profiles at the terminals?  
25 Someone mentioned that you have terminals, dummy

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1 terminals, Doug Spring referenced dummy terminals. Do  
2 you have dummy terminals?

3 MR. SCHAIBLEY: I'm not sure why he would use  
4 the term "dummy" terminal.

5 THE SPECIAL MASTER: But dummy terminal in  
6 technical terms means a very --

7 MR. SCHAIBLEY: We have Dropbox and  
8 Workstations on Wheels, which is basically a computer  
9 that's attached to a cart that can be rolled in from  
10 one hospital room to another and around on the floor.  
11 Those terminals are used with a kiosk account which is  
12 an individual account.

13 THE SPECIAL MASTER: Is it separate from  
14 their user account?

15 MR. SCHAIBLEY: Yes, it's not a computer that  
16 they log into. This is a computer that's already  
17 logged into and sitting on the desktop.

18 THE SPECIAL MASTER: Just so I understand,  
19 they have a user account, Doug Spring logs into the  
20 computer; that's his desktop. Does he have a  
21 different log-in password for the other device?

22 MR. SCHAIBLEY: No, there is no login for  
23 that device. It is already logged into a domain  
24 account. The end-user does not actually have a  
25 password that they put into it. When they get on that

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1 machine at that time when they would log in would be  
2 when they are logging into our Citrix environment.

3 THE SPECIAL MASTER: Because when he  
4 described it, I got a little confused. As I  
5 understand it, it is a free-floating station that I  
6 can bring up Citrix and log into my own terminal?

7 MR. SCHAIBLEY: Correct. He would use his  
8 own log in and the password at Citrix, not on the  
9 machines.

10 THE SPECIAL MASTER: Right, not on the dummy  
11 terminal?

12 MR. SCHAIBLEY: Correct. The machine is  
13 already logged into --

14 THE SPECIAL MASTER: I've got it. So it's  
15 not a dummy terminal. It's a computer where he was  
16 able to use Citrix to access his user profile and  
17 account.

18 MR. SCHAIBLEY: Yes.

19 THE SPECIAL MASTER: Can you make sure and  
20 include that clarification and question in the  
21 custodian interview?

22 MS. WITTY: Yes.

23 THE SPECIAL MASTER: What's SEIU? Just  
24 everybody said several times.

25 MR. TOSTRUD: Service Employees International



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1 Union.

2 THE SPECIAL MASTER: Now, mobile storage,  
3 that's another concept that I spoke with counsel -- do  
4 you allow mobile storage?

5 MR. SCHAIBLEY: What do you mean by mobile  
6 storage?

7 THE SPECIAL MASTER: So Mr. -- it says UMC  
8 does not allow personal mobile storage. " Does that  
9 mean on your mobile device?

10 MR. SCHAIBLEY: To me, that would be  
11 referencing one of two things, either referencing your  
12 personal mobile phone or referencing your personal  
13 thumb drive.

14 THE SPECIAL MASTER: Thumb drive?

15 A. Yes.

16 THE SPECIAL MASTER: Does each one of UMC  
17 employees have?

18 A. No, we do not allow personal USB sticks. If  
19 an individual user requires having a mobile USB stick  
20 they can request one from IT security, or an iron key.

21 THE SPECIAL MASTER: Was that included in the  
22 collection?

23 A. It was not, because none of the custodians  
24 had an iron key other than one, and the user who had  
25 an iron key in the initial, he accessed it the day it

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1 was given to him when he said his password and has not  
2 accessed it since then.

3 THE SPECIAL MASTER: We'll just work with  
4 counsel to make sure that if necessary that you  
5 preserve it accordingly because I don't have any  
6 details as to who the custodian is or anything. So I  
7 just ask that counsel works with you by next Friday to  
8 make sure that whatever -- I want you to physical ill  
9 verify this list, Counsel, that you look at what has  
10 been granted and what is in our custodian list and if  
11 there is duplicate or if there are such individuals,  
12 that you inquire further and just make as was just  
13 explained because we've added more people. Okay? Any  
14 questions there?

15 MS. WITTY: No.

16 THE SPECIAL MASTER: Plaintiff, any  
17 questions?

18 MR. TOSTRUD: (Shakes head side to side.)

19 THE SPECIAL MASTER: Intranet, when you see  
20 the custodian interviews, I apologize, see them now  
21 but -- can you explain to me what is your intranet.

22 A. It is our internal website.

23 THE SPECIAL MASTER: Is it possible to store  
24 and load documents?

25 A. No, not for our users. We do provide on the

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1 intranet, it's general information for our users, our  
2 policies and procedures are accessible from this.

3 THE SPECIAL MASTER: What about messages to  
4 employees?

5 A. We utilize it only as a notification period  
6 for current and ongoing issues with the medical record  
7 system.

8 THE SPECIAL MASTER: Counsel for UMC, I just  
9 need you to verify that you reviewed the intranet to  
10 make sure it doesn't contain any responsive  
11 information or relevant information to what is at  
12 issue here? For example, I could see that it could be  
13 used as a way -- is the mailing list tied to that at  
14 all?

15 A. No.

16 THE SPECIAL MASTER: So just double-check  
17 what data is there and verify.

18 MR. TOSTRUD: I do believe that policies and  
19 procedures that are available on the intranet are  
20 definitely responsive to our recognizes and our RFPs.

21 THE SPECIAL MASTER: Practice policies and  
22 procedures.

23 MR. TOSTRUD: Timekeeping policies and  
24 procedures, orientations for new employees.

25 THE SPECIAL MASTER: Can you bulletin that

1 out for me?

2 MR. TOSTRUD: Sure.

3 THE SPECIAL MASTER: I see that counsel for  
4 UMC will also make -- because one of the issues is  
5 when I read over what's on the intranet, I wasn't  
6 actually based on the description that was provided to  
7 me to actually able to figure out what they were  
8 actually using it for, so before I go and spend the  
9 time looking at their intranet myself, if you are  
10 storing such policies on there, I'd like a full list  
11 of them and I'd like to -- we can then --

12 MR. TOSTRUD: We'll bullet point those for  
13 you.

14 THE SPECIAL MASTER: I do agree with  
15 plaintiff from my perspective that it would seem that  
16 the intranet would logically be the place to store a  
17 large number of policies that people do or do not read  
18 and the versions of those policies and they may or may  
19 not be relevant. So I'm going to also to encourage  
20 you that you talk to the webmaster of the intranet to  
21 see if they have an archive of the policies.

22 What's the infrastructure for the intranet?  
23 Is it an I SS?

24 A. Yes.

25 THE SPECIAL MASTER: It has built-in

1 archiving capabilities?

2 A. I'm fairly certain the archiving backup is  
3 running on it.

4 THE SPECIAL MASTER: Just double-check for  
5 the relevant time periods and see if you can look at  
6 what it was there just to make sure.

7 This is for my own edification. I'm a little  
8 confused as to how these mobile phones, especially in  
9 2013, ended up being wiped. I'd like you to make an  
10 inquiry within UMC, giving the litigational letters  
11 that I read, which were multiple copies of the same  
12 one, actually, attached to different briefs, I would  
13 look further clarification and explanation as to how  
14 at least for the key custodians how that message --  
15 how is such a communication failure break down after  
16 two letters had been sent and you have gone into court  
17 on multiple occasions attaching these letters that the  
18 IT people weren't actually -- I'd like to understand  
19 where the breakdown happened to see from UMC's side  
20 where that actually did or did not occur.

21 Are there any third party consultants that  
22 you worked with were involved in the collection, the  
23 physical collection, not the forensics, I'm talking  
24 about the on-site collection?

25 A. No.

1 THE SPECIAL MASTER: Your efforts to collect  
2 the data.

3 A. No, it was just myself.

4 THE SPECIAL MASTER: I'd like to get the  
5 formal configuration policies for your exchange server  
6 particularly because Mr. Espinoza says that -- are  
7 there default Outlook settings?

8 A. What do you mean Outlook settings?

9 THE SPECIAL MASTER: You said only folders  
10 within the inbox have default Outlook settings? I  
11 don't even really care what he said. What I really  
12 understand is, when I log into Outlook, how is your  
13 mailbox configured, how does it actually work? I log  
14 into my computer. I assume that synchs all the way  
15 through. So then I open up Outlook. Can you walk me  
16 through that point.

17 A. Well, you open up Outlook for the first  
18 time -- and I'm referring to how it worked in 2003  
19 during this time period -- I'm sorry 2012 during this  
20 time period, on the 2003 exchange, when you open  
21 Outlook for the first time, it will automatically take  
22 your credentials from windows and --

23 THE SPECIAL MASTER: Store them.

24 A. -- configure your Outlook client directly for  
25 you. By default, when Outlook configures, it will

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1 creat your internal OST file based on your profile on  
2 the local drive.

3 Whenever a user is setting up their archive,  
4 they typically go through the desktop support and  
5 desktop support will walk them through creating a PST  
6 archive and the policy was for the desktop individuals  
7 to have them create their PST drives on the home drive  
8 and not on the local C drive, on your local profile,  
9 which is where it defaults. Some individuals still  
10 end up creating it under their profile because they  
11 didn't create the instruction correctly and didn't go  
12 through the help desk to get it set up --

13 THE SPECIAL MASTER: So then it won't sync  
14 for them?

15 A. No, it still syncs. It's just for that  
16 reason is why we make sure when we do data pulls that  
17 we go through and find whatever computers they have  
18 locally logged into and we have added their local  
19 profile from those computers so we can make sure we  
20 recover any local PSTs that were stored there, but as  
21 far as the folder structure and everything like that,  
22 the very first time that they log in, it creates just  
23 one individual folder of the inbox, the sent folder,  
24 the default things there. Anything beyond that that  
25 they create, the very first time it stores that into

1 their mailbox on the server.

2 So if user signs into computer A for the very  
3 first time in Outlook, creates 10 folders beneath  
4 their inbox, and then they end up going and signing  
5 into computer B, create, open Outlook for the first  
6 time. It will automatically pull down their mailbox  
7 based off of whatever structure they had from computer  
8 A.

9 THE SPECIAL MASTER: That happens with the  
10 Citrix too. So they are caching it?

11 A. Yes.

12 THE SPECIAL MASTER: So when you ran your  
13 collection script -- and just for purposes of the  
14 record I'm referring to the collection that UMC  
15 actually did, not the erroneous one that was  
16 represented in the last hearing but the actual one  
17 that was done. When that script is run, that would  
18 explain why then for some custodians 20 plus OST files  
19 because obviously they have several computers they are  
20 sitting at?

21 A. Correct.

22 THE SPECIAL MASTER: And that 22 also then  
23 explain why there was over 500 or 1,000-plus PST OST  
24 files. For the record for the five custodians I  
25 looked at I came up with over 70 or 80 different PST



1 OST files, because the way their scripts run, if you  
2 log into a local computer on your profile, it  
3 automatically creates a local OST, and he will log in  
4 and look at it, when you do the collection.

5 A. That's correct. And for that reason, that's  
6 why we have a policy in place and direct users to  
7 store their PST archives on their home folder, so that  
8 way, no matter what computer they log into, they have  
9 access to the same PST files and they are not creating  
10 duplicates and multiples.

11 THE SPECIAL MASTER: Right, so anytime I log  
12 in somewhere on the file share rather than the local  
13 device, the archive will work.

14 A. Correct.

15 THE SPECIAL MASTER: Okay. And in the case  
16 of Mr. Espinoza, he didn't have any archives. Is that  
17 normal? I believe he was two two. Was that the two  
18 two?

19 MR. EDMONDSON: Yes, that's the two two.

20 THE SPECIAL MASTER: He had no archive. He  
21 had no PST or OST files on the August -- unless in the  
22 April there was an archive, I didn't see one. Based  
23 on what you are telling me, there would be an  
24 automatic default of an archive created.

25 A. No, it does not automatically create a PST

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1 archive. That is a step that you have to take  
2 individually.

3 THE SPECIAL MASTER: Did he have unlimited  
4 storage?

5 A. He did not. At the time he was on 600  
6 megabyte storage limit.

7 THE SPECIAL MASTER: I'm just thinking --  
8 just reviewing everything that was said...

9 When someone writes an e-mail message on  
10 their BlackBerry and it's stored in their sent folder  
11 but let's say that it's not stored on the local  
12 profile, so Mr. Espinoza wrote a message on his  
13 BlackBerry, he wrote his e-mail message and given that  
14 it was wiped, whatever day it was that e-mail message  
15 doesn't exist anywhere if you deleted it out of the  
16 sent folder, right? It wouldn't be in the sent  
17 folder, so where would it --

18 A. With regard to the BlackBerries I do not  
19 recall if it would go into the sent folder or not with  
20 the way the BlackBerry server syncs with the exchange  
21 server.

22 THE SPECIAL MASTER: Because on January 20th,  
23 he got -- 8530 was updated, and based on the way you  
24 are describing the e-mail system, if I extend an  
25 e-mail to somebody from my BlackBerry, where does it

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1 sit?

2 A. Where does the --

3 THE SPECIAL MASTER: Mr. Espinoza wrote me an  
4 e-mail saying Daniel you're doing a fantastic job,  
5 hypothetically speaking, thank you very much, I like  
6 you a lot, you're my best friend and I wrote him back  
7 you are my BFF too, okay? Hypothetical. Where would  
8 that sit within UMC's environment.

9 A. Well, it would sit in --

10 THE SPECIAL MASTER: Message 1 and message 2?

11 A. Message 2 would sit in his inbox which still  
12 has message 1 attached to it. The original message 1,  
13 it would sit in his sent folders definitely on his  
14 BlackBerry and I do not have an answer for if that  
15 would actually sit in the sent folder on his mailbox  
16 as well.

17 THE SPECIAL MASTER: We are going to have to  
18 quickly figure that part out.

19 So then add to the search term BlackBerry --  
20 how does it go for BlackBerry? This message was  
21 sent -- who -- anybody remember back in -- off the  
22 record.

23 (OFF RECORD.)

24 THE SPECIAL MASTER: Back on the record. I  
25 want to record we are adding several search terms.

1 One will be -- plaintiff is going to provide a list of  
2 the different linguistic lingua franca of the mobile  
3 messaging that we will then -- it's not approved yet,  
4 but I want to look at it, and then what we've agreed  
5 ask that if it's a reasonable hit response within that  
6 meaning under let's say 500 responsive hits -- not  
7 hits, files, 500 files, not hits, and people  
8 understand the difference between a hit and a file, a  
9 file can have 100 hits, right, you know when your  
10 parents used to make you swear I will not swear, I  
11 will not swear, you could have 100 hits on I will not  
12 swear in one file. So we'll keep it at 500 files.  
13 And if it's over 500 files, we'll sample it and I'll  
14 log in remotely and look at it and I'm sample -- and  
15 if more than 50 percent are responsive then we'll go  
16 through the whole exercise of producing otherwise we  
17 will refine the search. Is that okay? Because what I  
18 didn't want to do is end up spending hours at looking  
19 at the new iPad case.

20 MR. GODINO: Right.

21 THE SPECIAL MASTER: So I just want to add  
22 the right colon or by or whatever it may be just to  
23 limit it. I don't want to ignore it as well. So  
24 we'll try it in this fashion. Is that acceptable to  
25 plaintiffs?

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1 MR. TOSTRUD: Yes.

2 THE SPECIAL MASTER: UMC, is that acceptable?

3 MS. WITTY: Yes.

4 THE SPECIAL MASTER: Let the record reflect  
5 both parties agree.

6 Okay. So  
7 now we've cleared those hurdles, the last thing that I  
8 have a question about, Mr. Espinoza again. He printed  
9 a weekly calendar.

10 MS. WITTY: Yes.

11 THE SPECIAL MASTER: What happened to it?  
12 Because he says he has a weekly calendar printed for  
13 him.

14 MS. WITTY: Yes.

15 THE SPECIAL MASTER: And it's a duplicate of  
16 Outlook and it's discarded weekly.

17 MS. WITTY: Yes, it's shredded at the end of  
18 every week.

19 THE SPECIAL MASTER: I just want to make sure  
20 I understood that. On Monday he comes to the office,  
21 it's printed out, at the end of the week it's gone.

22 MR. TOSTRUD: Is this in the custodian  
23 interviews?

24 THE SPECIAL MASTER: Yes.

25 MR. TOSTRUD: Is he currently shredding these

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1 or has he been?

2 MS. WITTY: Yes.

3 THE SPECIAL MASTER: He is? Let me go --  
4 make this very, very simple. If he is actively  
5 currently shredding his schedules.

6 MR. TOSTRUD: I just want to confirm we're on  
7 the record here?

8 THE SPECIAL MASTER: We're on the record.

9 MS. WITTY: Let me clarify. I'm not certain  
10 that's what was understood. I will clarify and make  
11 sure that we know exactly what is happening.

12 THE SPECIAL MASTER: I just want to know  
13 because I thought it was -- I just want to know --  
14 because the reason I ask is that the calendaring, he  
15 says it's a duplicate of Outlook. So if that's the  
16 case, fantastic, but because of his executive  
17 assistant and the way that she can use his calendar as  
18 well --

19 MS. WITTY: Right, she's the one printing it  
20 out for him.

21 THE SPECIAL MASTER: I need to figure out is  
22 she printing out his calendar or her calendar on  
23 her -- theoretically she could be printing up her  
24 version of his calendar and giving it to him, and he  
25 doesn't know. Right? She could have a view -- some

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1 executive assistants, they have their boss's calendar  
2 fully available to them, and then they have their  
3 calendar, and all they are doing is printing out their  
4 boss's calendar, because their boss doesn't know how  
5 to print their calendar; right, but there's nothing  
6 actually changing in it. Other times they are adding  
7 and working on the boss's calendar and the printed  
8 schedule is of relevance and of value.

9 MR. GODINO: Of course, that calendar could  
10 contain his notes, the printed calendar, so  
11 differently, obviously --

12 THE SPECIAL MASTER: I just need to  
13 understand what and how the print calendar -- like  
14 just ask him what -- and if he is actively, I would  
15 encourage him, that you advise him to cease until we  
16 resolve -- I don't think it matters at this stage.  
17 How does shredding today have any responsive  
18 information on it?

19 MS. FOLEY: The time period is over for the  
20 opt-ins.

21 THE SPECIAL MASTER: The way I read it, is  
22 there still an ongoing need to preserve his calendar?

23 MR. TOSTRUD: Yes, absolutely.

24 MS. FOLEY: What is that --

25 THE SPECIAL MASTER: It's Friday and I'm

1 happy to entertain the argument, but on Monday. So  
2 what I'm going to encourage you to do is tell him on  
3 Monday morning don't -- today, tell him don't shred  
4 your schedule from this week, if you've been shredding  
5 it. Maybe we misread the whole thing. And on Monday  
6 we'll work our way through it, because I'm equally --  
7 I want to hear from both sides, but I'm not ready to  
8 jump into that at this moment. I'm going to order  
9 just for the moment make sure that it's not being  
10 shredded until at least we have a hearing on Monday  
11 morning if it is indeed being shredded.

12 MS. FOLEY: And we'll check with him.

13 THE SPECIAL MASTER: It might not be being  
14 shredded. Get the clarification. It is please stop  
15 and I'll hear further about it. When you have the  
16 chance to read the custodian interviews I'm sure on  
17 Monday we'll have a litany of other issues to dialogue  
18 about at length.

19 One other reason why I didn't have them  
20 circulated so I could have my questions answered  
21 first. Not that I don't appreciate your interaction  
22 and contribution.

23 The other person obviously for the DOL on  
24 piece that would be relevant is Claudette Myers and  
25 her device, and so you might want to revisit that



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1 because in her custodian interview she indicates that  
2 she was assisting both -- I'm going to show it to  
3 counsel because she's going to clean it up for you,  
4 and if it's not in there, then I will -- on Monday we  
5 can discuss it. I just want to point something out to  
6 you. Go off the record for a second.

7 (OFF RECORD.)

8 THE SPECIAL MASTER: On the record. And this  
9 is for Mr. Schaibley. I had a general question. When  
10 you have scanners and copiers and all of these  
11 other -- do you have a document management system?

12 A. No.

13 THE SPECIAL MASTER: Okay. How do people  
14 actually -- how does it work, then?

15 A. Well, are you -- I'm just trying to  
16 understand the scope of your question. As far as --

17 THE SPECIAL MASTER: We asked them what do  
18 you use in your daily course of business to do your  
19 work, what systems do you use, and I found it a little  
20 odd given the size of your organization that nobody  
21 actually -- there is no document management, there is  
22 no standard header, footer, there is no document  
23 controls for like -- like I asked one of the questions  
24 we asked was -- maybe this will shed some light, so  
25 John Espinoza, he's involved in HR; right?

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1 A. Yes.

2 THE SPECIAL MASTER: And we discussed him  
3 what systems does he use on a daily basis, and he  
4 didn't mention a single document management system.  
5 I'm not saying that he's wrong, but he might not know  
6 that he's using, is what I'm saying. I'm not  
7 saying that -- from his perspective, he might be just  
8 opening Microsoft Word, but you might have a back-end  
9 document management system, and all I want to make  
10 sure is that your script, when it ran, hit those  
11 documents. If there is. If there is not -- I just  
12 found it a bit odd the guy that's running all of HR  
13 doesn't have a standard template --

14 MR. SCHAIBLEY: We have --

15 THE SPECIAL MASTER: -- system.

16 A. We have a central file server, UMC-FS01.

17 THE SPECIAL MASTER: So I read that as  
18 your -- what I couldn't figure out, is there a  
19 document management letter in there, or is it? Are  
20 there folders?

21 A. There is a folder structure, yes. That is --  
22 that file server is where the home folders are stored  
23 under a shared comp home, h-o-m-e, and each individual  
24 user has their local, not local, but their home folder  
25 underneath that share. We have an additional share

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1 called shared.

2 THE SPECIAL MASTER: My question is, when you  
3 run your script, does it pull from -- do you get all  
4 of the shared files? Because one other question I  
5 have for you about your script, this is probably one  
6 of the last questions for the day and I'll separate  
7 and talk to both sides.

8 One thing I couldn't figure out, if user  
9 permissions give me access to, let's say, shared HR  
10 folders --

11 A. Yes.

12 THE SPECIAL MASTER: The script, when I  
13 looked at the script, it didn't pull from any of the  
14 -- I don't know, which is why I'm asking you -- any of  
15 the shared work like HR --

16 A. Correct, it did not pull from there.

17 THE SPECIAL MASTER: I need you to  
18 immediately make sure that you are preserving from  
19 there and a copy is made.

20 A. Okay.

21 THE SPECIAL MASTER: Obviously -- and then I  
22 need you to look at their user permissions, and  
23 whatever they do touch, obviously, for the six  
24 custodians to include that in the ambit of what to  
25 search -- to be clear to UMC's counsel, what I'm

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1 referring to is when I read the script -- and the  
2 script is very thorough and it is much better than  
3 what your other colleague made, but that still  
4 doesn't -- there are still several large issues with  
5 it, and one of the big issues I have is that I assume  
6 there are file servers just like at a law firm they  
7 have like shared files, etc., but none of those were  
8 copied, and so -- or collected. And so I need that to  
9 happen immediately.

10 A. Okay.

11 THE SPECIAL MASTER: And just run the same  
12 script, copy it over, Robocopy them over, and look at  
13 the user permissions and Robocopy it over.

14 MR. SCHAIBLEY: Yes.

15 THE SPECIAL MASTER: And then chain of  
16 custody, and then give it to our colleague there.

17 MS. WITTY: You are asking to include  
18 anything that might be within the files and have  
19 access to?

20 THE SPECIAL MASTER: Yes, he took  
21 literally -- what I assume when you collected is you  
22 collect everything that is responsive or could be -- a  
23 source where they are holding that information. I  
24 would assume the shared HR folders and the shared  
25 accounting folders and the shared other directory

1 structures that exist, that they have -- are members  
2 of like -- let's go off the record.

3 (OFF RECORD.)

4 THE SPECIAL MASTER: Back on the record.

5 Just for purposes of clarity, I'm asking UMC  
6 to go identify each users, what they had access to in  
7 a network file share environment, specifically UMC-FS  
8 01 and I think there are several other file servers.

9 A. It's just the one.

10 THE SPECIAL MASTER: Just the one. Whatever  
11 ones may or may not that they have access to. I mean,  
12 your user profile will say this person has permissions  
13 to these network file-sharings. Whichever file,  
14 whatever server is there, I need a list generated, I  
15 need you to provide it to counsel, I need counsel for  
16 UMC to look at it say okay this is responsive and we  
17 need to -- I want to see it. I want counsel for UMC  
18 to see it. I need them to look at it and say this is  
19 responsive, this is not responsive for whatever the  
20 network file shares are. Once that is done, I want a  
21 chain of custody declaration added to it to document  
22 what you collected; right? And that is if there are  
23 such network file share sorts of operations. Are we  
24 clear?

25 A. Yes.

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1 THE SPECIAL MASTER: So if you have a shared  
2 folder for HR, a shared folder for payroll, a shared  
3 folder for whatever that these key custodians have  
4 access to, I want counsel to know what they were, I  
5 want them to know what was in it, and I want them to  
6 make a decision, and I want to be provided with the  
7 same information. Okay?

8 Any questions, counsel for UMC? Any  
9 questions, plaintiff? Okay.

10 I think that's all we're going to get through  
11 today because the next set of the effort is a little  
12 bit more detail oriented and I would like Mr. Pixley  
13 and the plaintiffs to digest the scan and repair  
14 issues and the too things that were covered before I  
15 take the time to discuss them with the parties. So I  
16 have nothing further to add.

17 MR. TOSTRUD: You asked us to just make sure  
18 a couple of things were covered by the end of the day.

19 THE SPECIAL MASTER: Yes.

20 MR. TOSTRUD: The first one was to set the  
21 schedule for production, and I think you covered that  
22 about a half-hour ago where early next week we'll  
23 set --

24 THE SPECIAL MASTER: On Monday we will set a  
25 production schedule. So that means over the weekend

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1 you need to figure out how long it's going to take. I  
2 need answers to the encryption. I need answers to the  
3 scan repair PST and I need answers -- I think whatever  
4 the other issues were.

5 MR. TOSTRUD: The second issue you asked us  
6 to make sure was covered was a major cut in e-mail  
7 files.

8 THE SPECIAL MASTER: Monday Mr. Pixley we're  
9 going to have.

10 MR. TOSTRUD: Can I preview one issue for  
11 Monday?

12 THE SPECIAL MASTER: I have finished my need  
13 to discuss things with you about the custodian  
14 interviews.

15 MR. TOSTRUD: This case revolves around UMC  
16 policies and practices at UMC. UMC which is about  
17 five minutes from here is sort of centrally located on  
18 one campus, but there are multiple so-called quick  
19 cares that are around the city, around Clark County,  
20 it's my understanding, approximately a dozen, and I  
21 don't know how that IT system is set up or whether  
22 that's been searched or its different.

23 THE SPECIAL MASTER: What would be on those  
24 systems, from your perspective?

25 MR. TOSTRUD: Well, from our perspective --

1 and we have people who joined our case from many of  
2 those different quick-care facilities. I believe  
3 there are computers at those facilities --

4 THE SPECIAL MASTER: There are definitely  
5 computers at the facilities. What is on them? Are  
6 you looking -- from your perspective what data would  
7 they have there? Would it be their time records?  
8 What is specifically at the facility that you think --  
9 because what -- I think you are right, but I want to  
10 know specifically what you believe would be stored  
11 locally at the facilities, and then we have a  
12 conversation with UMC's IT department to make sure it  
13 is stored locally, we get it, and if it's not stored  
14 locally that -- because the way I understood it, that  
15 everything is set up through network file server, but  
16 they don't have an enterprise architecture diagram, so  
17 one of the very exciting things we will do on Monday  
18 is we are going to make an enterprise architecture  
19 diagram so we can make sure that we have covered the  
20 systems, because I don't actually -- I'm fully  
21 aware --

22 MR. TOSTRUD: So I know there are timekeeping  
23 practices that are kept there, orientation and --  
24 orientation manuals, policies and procedures, I think  
25 some clients have drafted grievances that may exist on



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1 those terminals, scheduling.

2 THE SPECIAL MASTER: Why don't you come up  
3 with a bullet list. You don't have to share it. We  
4 can preview it and have a live conversation.

5 MR. TOSTRUD: That's fine.

6 THE SPECIAL MASTER: So I can come up -- and  
7 share with co-counsel, so we can -- I want to  
8 understand. One thing that will be covered on Monday  
9 just for counsel for UMC, is that one thing -- the  
10 only other thing that I can't quite figure out is I  
11 get how what was collected, but because there is no  
12 diagrams and it's not a reflection of counsel here,  
13 okay, but because there is literally -- can I call him  
14 Mr. Schaibley, that it's no reflection upon him, but  
15 frankly there is no documentation as to this is how it  
16 works for a satellite office and this is what systems  
17 are stored here. So that inherently is -- besides  
18 taking way more hours than what I estimated, it's  
19 going to inherently require us to identify and  
20 understand how it works. So if UMC, Mr. Schaibley,  
21 has anywhere something that could provide -- save me  
22 the time of what exactly systems do you have operating  
23 at a local -- what's local, what's server, and how is  
24 it stored, because what's going to have to happen is  
25 that they are going to come up with a list, and we're

1 going to have to make sure that you collected it all  
2 and provided it to counsel. Does that make sense?

3 A. Yes.

4 THE SPECIAL MASTER: My focus is I need to  
5 make sure that you properly collected from those  
6 locations anything that is stored locally if it is and  
7 provide it to counsel so that counsel can then  
8 properly comply with their obligations. So if you  
9 have anything that you could provide, that would be  
10 extremely helpful, because otherwise we will have to  
11 get out a Sharpie pen and paper and draw it, because I  
12 need to understand to make sure that you are  
13 preserving everything that we have everything that if  
14 grievances are stored locally at the offices I need to  
15 make sure that when the supervisor leaves that the  
16 grievances aren't going to go just as a hypothetical  
17 example. That may or may not have any merit. Okay?  
18 Does that make sense?

19 MS. FOLEY: (Nodded head up and down.)

20 THE SPECIAL MASTER: Just off the record.

21 (OFF RECORD.)

22

23

24

25

# Exhibit B

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1

UNITED STATES DISTRICT COURT

2

DISTRICT OF NEVADA

3

4

5

DANIEL SMALL, CAROLYN SMALL, )

WILLIAM CURTIN, DAVID COHEN, )

6

LANETTE LAWRENCE, and LOUISE )

COLLARD, Individually, and on )

7

Behalf of All Other Persons )

Similarly Situated, )

8

Plaintiff, )

9

vs. )

10

UNIVERSITY MEDICAL CENTER OF )

11

SOUTHERN NEVADA, )

12

Defendant. )

13

14

15

REPORTER'S TRANSCRIPT OF SPECIAL MASTER'S HEARING

16

Volume II

17

BEFORE SPECIAL MASTER PRESIDING, DANIEL GARRIE, ESQ.

18

Taken on Monday, April 7, 2014

19

At 9:12 a.m.

20

At 333 South Las Vegas Boulevard

21

Courtroom 3C

22

Las Vegas, Nevada

23

24

25

REPORTED BY: Janet C. Trimmer, CRR, CCR No. 864

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JASON CLARK  
MARILYN SUSAN KISNER (Present Telephonically  
at pages 81 to 98.)

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1	INDEX OF EXHIBITS		
2			
3	NUMBER	PAGE	DESCRIPTION
4	Exhibit 9	71	"Record Retention and Disposal"
5			
6	Exhibit 10	120	E-mail chain, top e-mail from
7			Lonnie Richardson to UMCPPost
8			dated 3-21-14
9			
10	Exhibit 11	203	"Joint Status Report"
11			
12	Exhibit 12	213	Folder of documents
13			
14	Exhibit 13	214	Spiral document titled "Search
15			Instance"
16			
17	Exhibit 14	260	E-mail dated 9-19-12 from John
18			Espinoza to Doug Spring, Bates
19			UMC 100006
20			
21	Exhibit 15	262	Excerpt from the videotaped
22			deposition of John Espinoza
23			pages 151 through 171
24			
25			

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1 \*\*\*\*\*Proceedings\*\*\*\*\*

2

3 THE SPECIAL MASTER: Let's go on the record.  
4 I've got the seating charts. I have some housekeeping  
5 issues to go through.

6 First, I would like to recognize and thank  
7 both sides for going the distance over the weekend,  
8 getting and turning around the revised order for the  
9 Court and also getting the custodian interviews and  
10 circulating them, because believe it or not, they were  
11 a lot of different pieces of paper that needed to all  
12 be combined into one, and so I appreciate that effort.

13 I'm going to today do this in two ways. I  
14 wanted to just try to get right into the scan and  
15 repair, but I did review --

16 Off the record.

17 (OFF RECORD.)

18 THE SPECIAL MASTER: Back on the record.

19 I want to make clear to all parties that when  
20 you offer testimony here, it is under the same  
21 auspices of it being under oath. I don't make people  
22 formally swear in for anybody that's a member of the  
23 bar. I extend everybody that courtesy because you are  
24 a member of the profession. I'm an attorney. I don't  
25 believe it's ever necessary.

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1 I want the technology people -- I'm not going  
2 to -- unless Plaintiff objects, I want -- I don't see  
3 the need to have them swear -- like bring them in as a  
4 formal depo.

5 But I want you to understand you are making  
6 statements to an Officer of the Court. So  
7 forthrightness and truth is the utmost importance.

8 Saying "I don't know" is completely  
9 acceptable. Telling me something that then turns out  
10 to be not true is not the right path. Right? So I  
11 just -- and so I have no problems with anybody saying,  
12 "I do not know, I need to get back to you and I will  
13 provide you a written response." We'll preserve it in  
14 the record, and we'll go forward from there.

15 But making a statement that then -- I then  
16 have to go back and when I'm reviewing my notes turns  
17 out not to be true, based on the very materials you  
18 provided to me, ends up being a problem downstream.

19 Is that crystal-clear to all parties?  
20 Plaintiff? Defense? Sorry.

21 Plaintiff? "Yes"?

22 MR. GODINO: Yes, yes.

23 THE SPECIAL MASTER: Defense?

24 MR. SCHAIBLEY: Yes.

25 THE SPECIAL MASTER: IT people in the back?



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1 MR. LATTIN: Yes.

2 THE SPECIAL MASTER: And that would be Shane  
3 Lattin and Jason Clark.

4 Okay. So now, I'm going to do a couple of  
5 things today. First thing I want to do is I want to  
6 go through the hearing transcript from Friday to make  
7 sure we all understand everything that's being  
8 expected to be provided and the dates and the times,  
9 because there were a lot of things covered.

10 I don't expect that to take us more than 45  
11 minutes, but I think that's very important because  
12 that way we'll also have a clean record, and we'll  
13 also have, if Plaintiff wants to add or I forgot  
14 things or Defense wants to respond or whatever, but we  
15 can discuss that and it will all be clear, because we  
16 covered a huge amount, and I'd like to just make it  
17 all clear.

18 Is that okay to both sides?

19 MR. TOSTRUD: Absolutely.

20 THE SPECIAL MASTER: Okay. So the first  
21 thing we have is from the -- is that we were going  
22 to -- for Mr. Espinoza, we were going to verify how  
23 the two PSTs and OSTs came about. You were going to  
24 verify that.

25 I'd like to actually see -- I went through

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1 the other -- the additional Excel spreadsheet that I  
2 got that is the entire serving sitting piece, and I  
3 ran that as well. I didn't see the PST and OST files  
4 sitting in it for him.

5 So what I want to know is where are they  
6 sitting, and I would like to have a screen shot of  
7 where they are sitting; I would like to know that,  
8 right, because I'm trying to figure out how the  
9 materials that I have -- I can't actually find the  
10 e-mail files in the scan and repair -- where they are  
11 sitting.

12 If Mr. Edmondson could be so kind as to  
13 verify that for me as well within his collection,  
14 okay, because I can't actually figure out what the  
15 source was of Mr. Espinoza's e-mail.

16 The other thing I would like to happen is,  
17 now that we've all had a chance to -- on Friday, we  
18 are going to identify the different e-mail clients.

19 Mr. Edmondson, I need you to go through and,  
20 for each custodian, identify the different mailboxes  
21 that you find so -- for the six or seven that we have.  
22 For -- to be clear as an example, Joe Espinoza --  
23 sorry, not Joe -- is it John?

24 MS. WITTY: Yes, John.

25 THE SPECIAL MASTER: Mr. Espinoza has used

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1 Outlook, and we have OST and PST files.

2 Next person, they had Outlook Express  
3 because, based on the custodial interviews I got,  
4 nobody -- like the Outlook Express wasn't captured  
5 anywhere. And I understand that people don't know the  
6 difference, but I need to have -- I need to know,  
7 right, if they are using Outlook and Outlook Express;  
8 I believe that we need to understand who is using  
9 what.

10 Is that clear?

11 MR. EDMONDSON: Yes.

12 THE SPECIAL MASTER: Now, the scan/repair PST  
13 issue. And to be clear, I ordered you to produce, and  
14 it was produced, the scan/repair PST logs, right, and  
15 you received it.

16 There was also -- you provided me the -- and  
17 I forgot to order you to produce it, if there is no  
18 objection, the other repair -- I'm blanking right  
19 now -- I got from you -- give me one second.

20 I'm just looking for the e-mail that was sent  
21 to me with those attachments, Outlook Express.

22 Do you know what I'm referring to, Counsel  
23 for UMC?

24 MS. WITTY: I'm not clear exactly what you  
25 are requesting.

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1 THE SPECIAL MASTER: There was -- you sent me  
2 when it came with the scan/repair logs.

3 MS. WITTY: The full directory listing?

4 THE SPECIAL MASTER: No, not the full  
5 directory listing. There was another repair.

6 Mr. Edmondson, do you know what I'm referring  
7 to?

8 MR. EDMONDSON: Yes.

9 THE SPECIAL MASTER: What's the name of that  
10 file again?

11 MR. EDMONDSON: Let me check.

12 THE SPECIAL MASTER: There we go.

13 MR. EDMONDSON: Found it?

14 THE SPECIAL MASTER: Yes. "Test e-mail  
15 eCapture export."

16 MR. EDMONDSON: Yes.

17 THE SPECIAL MASTER: Thank you. I was trying  
18 to remember because -- the "test" part.

19 I would like to provide that to the other  
20 side. Is there any objection to that?

21 MS. WITTY: No. We've reviewed it.

22 THE SPECIAL MASTER: Okay. So I'd like you  
23 to provide that to -- I'm ordering that to be produced  
24 as well.

25 So we can actually review that.

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1 I'm going to -- let's go through this. I'm  
2 going to -- go off the record for a sec.

3 (OFF RECORD.)

4 THE SPECIAL MASTER: Let's go back on the  
5 record.

6 I'm going to first defer to Plaintiffs since  
7 you've had a chance to refer the scan/repair logs.  
8 I'm going to let you -- do you have any issues with  
9 them?

10 MR. PIXLEY: No.

11 THE SPECIAL MASTER: Do you have any concerns  
12 about the way it was done or the results?

13 MR. PIXLEY: Not with the scan and repair  
14 tool itself. My concern is the other issue that you  
15 raised with the truncating of the PST files.

16 THE SPECIAL MASTER: So -- okay. I had the  
17 similar concern. I just wanted to wait for you to  
18 have the same chance to review it before I weighed in.

19 Do you have any other concerns based on the  
20 repair logs themselves for particular custodians?

21 MR. PIXLEY: No. It just acknowledges that  
22 he completed the task, but it's not like -- I don't  
23 have access to the actual file, so it's just evidence  
24 that he used the tool to complete the task.

25 THE SPECIAL MASTER: Right. And so I have --

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1 I'm going to want to know the -- in the results it  
2 didn't actually detail out the files that were  
3 repaired, did it?

4 MR. PIXLEY: Well, it's the name of the file  
5 itself.

6 THE SPECIAL MASTER: Right.

7 MR. PIXLEY: So that was the question that I  
8 had. He -- I've used the tool before. So it  
9 basically just takes the name of the PST file and it  
10 just appends .log.

11 THE SPECIAL MASTER: Right. Right. So I  
12 just wanted to make sure. But those were the only  
13 ones that had problems or those were the only ones --  
14 that was all the PST and OST files in the entire  
15 collection today?

16 MR. EDMONDSON: That was all of the  
17 de-duplicated PST and OST files in the population --

18 THE SPECIAL MASTER: De-duplicated by hash?

19 MR. EDMONDSON: Hash value, yes, 75.

20 THE SPECIAL MASTER: All right. Now, I have  
21 a similar concern, if Plaintiff has none, about the  
22 scan and repair log files. I would like to know, from  
23 the containers that were created, I'd like to actually  
24 know, once you have repaired them, how many e-mail  
25 messages were logged.

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1                   So you have a repaired file and you had the  
2                   original, you should be able to right-click, get a  
3                   message count, right-click, get a message count, and I  
4                   should know. So I would like a table created  
5                   detailing that out so I have some knowledge of the  
6                   specific messages and the total amount of loss values.

7                   Now, as to the tools, I think first the real  
8                   solution here is we need a better tool, unless you  
9                   disagree, because the solution that was provided with  
10                  the trimming that happened isn't going to -- it  
11                  doesn't work. I mean, the trimming is really so  
12                  dramatic that we have no real idea of how much is  
13                  lost.

14                  And, Mr. Schaibley, I do have -- you're  
15                  the -- among your peers here today, you are the  
16                  Exchange person I can go to today, or is there someone  
17                  else?

18                  MR. SCHAIBLEY: Yes.

19                  THE SPECIAL MASTER: Okay. With regards to  
20                  the Exchange environment itself and those PST and OST  
21                  files, those two particular ones, I want the hash  
22                  values run for those two PST/OSTs. I want them  
23                  compared against what he has. I want to make sure  
24                  there was no issue with the -- the multiple people  
25                  that the image was made and another image was made,

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1       that nothing -- that those two files are indeed the  
2       best possible source we have.

3               Once that's verified, which I don't expect it  
4       not to be, I'm not -- I don't think anybody here --  
5       I'm just double-checking to -- to the easiest possible  
6       solution first.

7               If that doesn't work, I'm going -- I'm open  
8       to suggestions from Plaintiff before I go down another  
9       path.

10              Do you have alternative solutions to the  
11       trimming?

12              MR. PIXLEY: Yes. One, I -- I guess my first  
13       thought is were those files able to be mounted within  
14       EnCase in the first place, are they actually viewable,  
15       or are they just corrupt?

16              MR. EDMONDSON: I haven't tried, but I can  
17       check right here, if that would help.

18              MR. PIXLEY: So that would be the first  
19       stage.

20              Then the second thing was, if it cannot be  
21       opened, then we need to look at the idea of splitting  
22       them.

23              THE SPECIAL MASTER: Well, I agree -- I mean,  
24       I don't -- I mean -- yes, I think that that would be  
25       the most logical if they can't be actually opened,



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1 full stop. If they can be opened -- so there's two  
2 paths; right? First, see -- can they be mounted? I  
3 assume they could be. If they can't be -- and it's  
4 a -- thank you for pointing that out.

5 With the assumption they can be mounted, what  
6 would you -- the path -- let's say they can be  
7 mounted. What would you want to do next?

8 MR. PIXLEY: Well, if they can be mounted,  
9 then we can just go ahead run the search terms against  
10 them and just produce the responsive MSG files.

11 THE SPECIAL MASTER: Right. So the way I saw  
12 it is that similarly, rather than do anything more,  
13 the simplest solution is often the easiest and best  
14 solution, which is just do the manual effort of  
15 loading those specific files and running the search  
16 terms through those specific files. And if it works,  
17 great, we can move forward. If it doesn't work, we  
18 can further address the issue.

19 If it can't be mounted -- so I'm going to  
20 order you to run the search -- mount -- well, you want  
21 to let us know the results?

22 MR. EDMONDSON: Yes, I'm about to turn over  
23 them right now. It may take a couple of minutes.

24 THE SPECIAL MASTER: Well, obviously, if  
25 there were -- any error logs that come up, be provided

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1 to -- with the error logs that are generated, if any  
2 are.

3 The alternative, if they can't be mounted,  
4 I'm going to suggest that we use an alternative tool  
5 to try and repair it, unless you have some other...

6 MR. PIXLEY: I agree. I guess my other  
7 thought is, I don't know the date range, like, what's  
8 the last run date of these PST files? So, I mean, are  
9 they -- do we even know what those are?

10 THE SPECIAL MASTER: And what are the --  
11 yeah, what are the date time stamps? I have them  
12 written down. I just...

13 MR. EDMONDSON: There's -- one of them is  
14 8-23-2013.

15 THE SPECIAL MASTER: I mean, that's why I  
16 pick -- I didn't -- yes.

17 MR. EDMONDSON: Yes, 8-23-2013. So if you --

18 MR. PIXLEY: We do care what --

19 THE SPECIAL MASTER: Yes, I mean, that's --  
20 so let's assume that I have enough common sense,  
21 generally speaking, that I -- if we're having -- yes,  
22 100 percent, and I apologize for not stating what I  
23 had already done, myself, because I had received all  
24 of the PST and OST files in a file listing.

25 So assuming it's relevant --

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1 MR. PIXLEY: The other step, just a simple  
2 thing, would be if it can't be mounted, we can still  
3 run the raw search terms. We just have to set the  
4 search expression to make sure that we're using  
5 Outlook compressed --

6 THE SPECIAL MASTER: Could be one of the  
7 issues.

8 MR. PIXLEY: -- as -- make sure that our  
9 search parameters are run as Outlook compressed. So  
10 we'll just see if any of our search terms hit. If our  
11 search terms are not hitting within this PST file,  
12 really going --

13 THE SPECIAL MASTER: Going any further?

14 MR. PIXLEY: Right. So I have kind of a  
15 phased approach, but I guess the first thing is --

16 THE SPECIAL MASTER: I mean, so I agree. I  
17 thought before you would that, I mean, what I would do  
18 is try to run maybe a different repair tool on it.  
19 Maybe it might be more effective, just...

20 I mean, I've had different results with  
21 different tools, and it really depends on the type of  
22 error, because I can't exactly -- given that we can't  
23 even figure out what the error was, because it wasn't  
24 even repairable, I think maybe looking or trying a  
25 different tool might at least give me some more

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1 information before I go down the path of running the  
2 search terms, seeing what hit, seeing if there are any  
3 archive frag- -- whatever, fragments.

4 The other thing I would like to verify is,  
5 that wasn't the live collection; right? Just to be  
6 clear, Mr. Schaibley, did you have a chance to look at  
7 it?

8 MR. SCHAIBLEY: Which one?

9 THE SPECIAL MASTER: The PST and OSTs that  
10 we're talking about. Those aren't not from the  
11 live -- you did tag them with the right --

12 MR. SCHAIBLEY: Yes, anything in the home  
13 drive was not live.

14 THE SPECIAL MASTER: Right.

15 MR. SCHAIBLEY: The one that was live was  
16 actually labeled --

17 THE SPECIAL MASTER: Well, yes, I know. I  
18 just -- because that's what I ran in -- my search on  
19 the other one. Have you actually just searched the  
20 spreadsheet you gave me for the word "live"? You will  
21 see...

22 The -- so you weren't here on Friday, but  
23 they ran it on the live mailboxes, as well as their  
24 home drives themselves. So what we are talking about,  
25 what's stored in the user's home drive.

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1                   So what I suggest is we run a tool, there are  
2                   three or four tools out there, just to understand  
3                   what -- if any tool can actually do it before we spend  
4                   a great deal of time with the more detailed and  
5                   nuanced approach of -- assuming -- well, could it be  
6                   loaded?

7                   MR. EDMONDSON: It's still attempting to map  
8                   the file structure.

9                   THE SPECIAL MASTER: So this is all assuming  
10                  it can't be done.

11                  Well, what was your proposed -- I mean, the  
12                  only thing I would like to suggest before we go down  
13                  the path of a more refined, iterative approach is that  
14                  we just try -- you know, there's -- if my memory  
15                  serves me, I've used DateNumen before -- DataNumen  
16                  before when I've had some problems here and there.

17                  Each one has -- I believe, fixes a different  
18                  issue. I've never -- I mean, I have all four tools.  
19                  So I mean, I'm not going to recommend -- order you to  
20                  use all four tools, but is there a particular tool you  
21                  like, Phoenix -- is there a tool that you find...

22                  MR. PIXLEY: No, no. I mean, I would go  
23                  through the same, just trying different ones just to  
24                  see what we get.

25                  THE SPECIAL MASTER: So I would like you to

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1 go through -- if they can't be mounted, we're talking,  
2 I would like you to just try the different tools.  
3 Pick -- I can suggest -- we could do Phoenix, I've  
4 used -- and DataNumen, or can you -- there are other  
5 ones, but I think those two are good as any of the  
6 others.

7 MR. PIXLEY: That's fine.

8 THE SPECIAL MASTER: So I would like you to  
9 just try it on those because it is within the relevant  
10 date range and that the trimming was so big, it is  
11 fairly important we, at the very least, try a way to  
12 some extent to be able to search them for the search  
13 terms.

14 What were you going to suggest for the more  
15 nuanced iterative approach?

16 MR. PIXLEY: If -- one was just using EnCase  
17 if it saw it as a raw file. If it couldn't be  
18 mounted, it's just running the search terms. But when  
19 you run the search terms and you set up your search  
20 expression, you have to set your code page to Outlook  
21 compressible and -- because that's how the data is  
22 stored.

23 THE SPECIAL MASTER: Right. But I'm assuming  
24 that's -- I assume that's how it was. Fair point.

25 Mr. Edmondson, I just want to confirm, when

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1       you are doing it, you are setting the file type and  
2       the -- like to -- to the Outlook compression?

3               MR. EDMONDSON: In doing keyword searching,  
4       right now I'm using the index because it's fully  
5       processed in EnCase 7 and automatically identifies the  
6       code page as the processes.

7               THE SPECIAL MASTER: That'll work. That does  
8       it automatically. That's fine.

9               So then what was the next -- Mr. Edmondson, I  
10       just need you to make sure you are listening because  
11       this is what we are proposing and your counsel is  
12       going to be relying on you to help them here.

13              What was the next step?

14              MR. PIXLEY: Well, if -- once we know that  
15       something is there and if -- again, using Outlook,  
16       it's -- Outlook compressible encryption is the code  
17       page to use, then we would have to look at either  
18       those tools that you just mentioned or splitting them.

19              THE SPECIAL MASTER: Yes, I'm going to  
20       suggest if the tools don't work, we split. I don't  
21       know how else to do it. I genuinely don't think there  
22       is a viable alternative. You could use fragment  
23       carver and go into X-Ways and look at the --

24              MR. PIXLEY: No, I'm not --

25              THE SPECIAL MASTER: -- and decompress.

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1 I mean, I agree with you. I think the most  
2 practical solution here from a practical level is to,  
3 if it doesn't work, split them and then go from there.

4 MR. PIXLEY: Agreed.

5 THE SPECIAL MASTER: On what size would you  
6 like to see it at?

7 MR. PIXLEY: Well, if we are going to split  
8 them, I would probably split them just a little bit  
9 under the 2-gig mark there, just so they will actually  
10 function.

11 THE SPECIAL MASTER: I think you -- did you  
12 try that last time?

13 MR. EDMONDSON: I didn't try splitting them.  
14 I just used the trim for Microsoft's knowledge.

15 THE SPECIAL MASTER: All right. So the --  
16 okay. So what should happen is that you will try  
17 splitting them, and then usually if splitting doesn't  
18 work, you then trim. But you can -- I guess some  
19 people do trim first then split, but usually splitting  
20 allows you to preserve more of the data, so  
21 you utilize trim as the last resort.

22 So when you trimmed, I assume that you had  
23 tried splitting. But if splitting hasn't been tried,  
24 that is always the first approach before trimming.

25 Is that an acceptable path to go down there



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1 for you guys?

2 MR. PIXLEY: Yes.

3 THE SPECIAL MASTER: I don't have any  
4 problems with that. I actually -- and to be clear, I  
5 actually assumed that you had tried splitting. But if  
6 you haven't tried splitting, you should try splitting  
7 them and to cut it as fine as possible. At that  
8 point, we'll go from there.

9 Is it mountable?

10 MR. EDMONDSON: One is creating the cache  
11 files, so it does look like at least one of them has  
12 finished viewing. It should be visible --

13 THE SPECIAL MASTER: Which one? I mean, its  
14 filename would be useful.

15 MR. EDMONDSON: I don't know yet until it's  
16 done.

17 THE SPECIAL MASTER: So once it's done, let  
18 the Court know.

19 MR. EDMONDSON: Yes.

20 THE SPECIAL MASTER: Okay. Any other  
21 concerns about the scan/repair issue?

22 MR. PIXLEY: No.

23 THE SPECIAL MASTER: I will tell you one  
24 general concern I have, and this is more directed  
25 towards UMC's -- I guess not the -- unfortunately, you

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1 guys are here, but it's more the people that were  
2 making the decisions and asking you to do the work.

3 I'm a little shocked and surprised that they  
4 didn't actually ask you to verify what was -- like you  
5 did it perfect when you did your live collection. You  
6 got the live collection, you loaded it, you made sure  
7 it worked, and you gave it to -- you know.

8 And I'm surprised that they didn't ask or  
9 expect you to do the same for the mailboxes you were  
10 providing. Because at the end of the day, that would  
11 have prevented nearly all or a large number of these  
12 issues, I believe, from actually ever happening in the  
13 first place. I'm a little surprised that that didn't  
14 happen.

15 I'm also -- you know, Mr. Edmondson, I do  
16 think best practices sort of dictate that you make  
17 sure that when -- that all of the e-mail PST and OST  
18 files you are looking at are usable and loadable and  
19 operational and can be used before you run anything.  
20 You need to make sure the evidence you are bringing in  
21 is actually usable evidence. We shouldn't end up  
22 going all the way downstream to now to find out that,  
23 "Oh, yes, the PST and OSTs were corrupted." Right?  
24 This is, like, very late in the game, and it's proving  
25 to be fairly costly for all sides.

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1           I mean, standard practice would be that when  
2           you import the evidence, you make sure that if there  
3           are any issues, you tell counsel, counsel then can  
4           raise it to opposing counsel, and there can be a  
5           conversation, and they can act -- if they believe it's  
6           necessary, if they believe it's in -- like we did. I  
7           checked the date range. Is it in a responsive date  
8           range? Yes, it is.

9           Okay. I need to tell counsel that they have  
10          two PST and OST files that have an issue or problem,  
11          and then have a conversation with them so that the  
12          counsel for UMC can then have an educated conversation  
13          about what's next to do.

14          Without that information, it's very hard for  
15          them -- while I appreciate Plaintiffs' frustration,  
16          but I think UMC's -- I think you need to recognize  
17          that -- you need to make sure the information is  
18          bubbling up to the lawyers; right?

19          And it's not, and it can't -- this must  
20          change, like, immediately this must change. Like,  
21          your lawyers must be brought into the loop and  
22          explain. Like, you must check the evidence as you  
23          import it to make sure they are valid evidence files;  
24          right? And you must tell the lawyers that, "Hey, look  
25          the collection we've got has these issues." Right?

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1 So we don't end up here.

2 Okay. Moving right along, I don't have  
3 anything else on scan and repair. I actually thought  
4 splitting had happened. If it hasn't happened, you  
5 will let us know the results, and we'll revisit that.

6 Moving forward, I did order you, just to be  
7 clear, for -- you to process, unless -- the  
8 Plaintiffs, if you have any objection to having the  
9 entire everything processed through EnCase 7. Is  
10 there any objection from Plaintiffs' side?

11 MR. PIXLEY: No.

12 THE SPECIAL MASTER: Okay. And that's to  
13 process everything, and the chain of custody should,  
14 you know, obviously, map to the other side.

15 MR. EDMONDSON: Uh-huh.

16 THE SPECIAL MASTER: Okay. We didn't set a  
17 date for the rolling production, but we will shortly.

18 Encryption, did anybody make a -- I ordered  
19 you to look into the encryption. Did you look into  
20 it?

21 MR. EDMONDSON: Yes.

22 THE SPECIAL MASTER: Can you shed any further  
23 light to Microsoft Crypto being run?

24 MR. EDMONDSON: The actual -- let me pull up  
25 the list that I sent this morning.

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1 THE SPECIAL MASTER: And, again, you're --  
2 you need to check on a going-forward basis this  
3 information so that your lawyers know this.

4 And, UMC, you must tell outside -- your  
5 outside IT people -- well, I think you don't allow  
6 encryption. But if you do allow encryption of any  
7 shape or form, you need to -- you need to tell them,  
8 "We do not allow encryption." Right?

9 But if you do allow encryption, you need to  
10 say, "We allow encryption of X, Y, and Z," so that  
11 that information gets passed forward; because  
12 otherwise, again, we end up with me looking at all the  
13 paths.

14 MR. EDMONDSON: The actual files identified  
15 by EnCase as encryption included two DMG files for  
16 Macintosh, four PGP ciphertexts, and two certificates,  
17 Internet security certificates. That was all.

18 There were additional password-protected  
19 files which were password protected with varying  
20 levels of encryption which were exported to Passware  
21 and processed.

22 THE SPECIAL MASTER: Without issue?

23 MR. EDMONDSON: Without issue. There were  
24 some --

25 MS. WITTY: For the court reporter, could you

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1 repeat?

2 MR. EDMONDSON: They were exported from  
3 EnCase and processed with Passware to break the  
4 passwords.

5 Some files that were identified by EnCase as  
6 having a signature of WordPerfect but did not have  
7 WordPerfect extensions could not be broken. They do  
8 not appear to be actual WordPerfect files. I have not  
9 been able to identify what they are yet.

10 THE SPECIAL MASTER: Can you provide counsel  
11 with those filenames?

12 MR. EDMONDSON: Yes.

13 THE SPECIAL MASTER: Counsel, have you  
14 received those?

15 MS. WITTY: Yes.

16 THE SPECIAL MASTER: And when did they  
17 receive it? Yesterday?

18 MR. EDMONDSON: This morning.

19 THE SPECIAL MASTER: This morning? Okay.

20 How many files?

21 MR. EDMONDSON: There were unidentified that  
22 it believes was WordPerfect.

23 THE SPECIAL MASTER: How many total files do  
24 we have at issue with this problem?

25 MR. EDMONDSON: I would have to count them.

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1 I exported the entire report from --

2 THE SPECIAL MASTER: If you have an Excel  
3 spreadsheet, just -- sum it for you at the bottom.

4 While you are doing that, I have a question  
5 for Mr. Schaibley, or your colleagues, actually.

6 DMG file, any ideas? It's in Mac OSX file,  
7 in case you don't know.

8 That's actually an image, Mac image.

9 MR. LATTIN: We can install --

10 THE REPORTER: I cannot hear you.

11 THE SPECIAL MASTER: Yes, it's a Mac install  
12 file used -- or a load -- it's a -- any idea as to how  
13 that ended up there?

14 MR. CLARK: (Shakes head side to side.)

15 THE SPECIAL MASTER: Is it allowed to be  
16 there? Because based on what I was told and what I've  
17 read, that a Mac OSX DMG file should not be sitting on  
18 anyone's device, unless I misread your policies  
19 myself.

20 MR. LATTIN: I don't know.

21 MR. SCHAIBLEY: I have no answer to that.

22 THE SPECIAL MASTER: All right. I'm going to  
23 go off the record.

24 (OFF RECORD.)

25 THE SPECIAL MASTER: Let's get back on the

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1 record.

2           Once we get the total number of encrypted  
3 files that we're dealing with, I'm going to carve --  
4 what I'm going to suggest is -- and, Plaintiff, if you  
5 have no objection, because I want to get this rolling  
6 production -- you will document all of these files in  
7 a spreadsheet, and a Word doc attached.

8           You will say you are dealing with these  
9 issues relating to these custodians for encrypted  
10 files; we recognize that we're not running the search  
11 terms on these files until we can do it for these  
12 custodians.

13           But I'd like to start running search terms on  
14 custodians and turning data over. And once we fix the  
15 encryption issue for these files, we will run the  
16 search terms and produce anything that's responsive.

17           Does anybody have any objection to that?

18           MR. GODINO: No.

19           THE SPECIAL MASTER: UMC?

20           MS. WITTY: No.

21           THE SPECIAL MASTER: So that takes care of  
22 one big problem for rolling production, encrypted  
23 files. I'm ordering you by Friday to come to me with  
24 a solution; otherwise I will use a forensic neutral  
25 myself who I know can give me a solution.



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1                   So you have until this coming Friday to give  
2                   me a solution, or I will appoint somebody, a  
3                   third-party neutral, to get me a solution; right?  
4                   Because I don't want to look at all of your data. I  
5                   just don't have the desire. I mean, I can, and I will  
6                   remotely log in and verify results, myself.

7                   We -- let's -- I was going to save it for  
8                   later today, but I intend to, with UMC, remotely log  
9                   in and verify and look at the different things that I  
10                  have and that certain things were done. Okay?

11                  You have till Friday to figure it out; right?  
12                  There should be no reason why at least the custodians  
13                  don't know the passwords to the encrypted files that  
14                  they have.

15                  MR. EDMONDSON: For the counts, there were a  
16                  total of 779 files with passwords of some type. 107  
17                  of them are the ones that appear to be WordPerfect but  
18                  cannot be broken and cannot be opened by WordPerfect.  
19                  They don't have WordPerfect extensions either.

20                  THE SPECIAL MASTER: And as far as -- is  
21                  there anybody with -- besides yourself,  
22                  Mr. Schaibley -- Mr. Schaibley, your two peers, does  
23                  any of you have any knowledge about the encryption?

24                               (There was an off-the-record conference  
25                               between Mr. Schaibley, Mr. Clark, and

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1 Mr. Lattin.)

2 THE SPECIAL MASTER: Do you have users that  
3 use WordPerfect?

4 MR. CLARK: WordPerfect, we never use it now.  
5 It was taken out when they went to Word. If somebody  
6 left a WordPerfect file there years ago.

7 THE SPECIAL MASTER: You have WordPerfect  
8 installed on the computers now?

9 MR. CLARK: No.

10 THE SPECIAL MASTER: Okay. What about Lotus,  
11 just out of curiosity?

12 MR. LATTIN: No.

13 THE SPECIAL MASTER: Just thought I'd ask.

14 So then if it's not supposed to be a  
15 WordPerfect-recognized file by EnCase -- I've seen  
16 this once or twice, but I'm going to leave it for you  
17 to figure out internally. They are not supposed to be  
18 encrypted. There's 700 files. We're carving them  
19 out.

20 Do you have any objection to any of this?

21 MR. GODINO: No.

22 THE SPECIAL MASTER: All right. Okay. The  
23 chain of custody forms and the server mappings, is  
24 that in progress?

25 MR. SCHAIBLEY: Yes.

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1 THE SPECIAL MASTER: Okay. When -- I can --  
2 do you want to suggest a date or do you want me to  
3 pick one?

4 MR. SCHAIBLEY: I can have them to you before  
5 the end of the week, sir.

6 THE SPECIAL MASTER: Okay. So we'll give you  
7 the following Monday to have them in my hands, so you  
8 will have till the 14th.

9 Go off the record.

10 (OFF RECORD.)

11 THE SPECIAL MASTER: Back on the record.

12 BlackBerry, yes.

13 MR. EDMONDSON: A quick note: It has  
14 finished mounting both of those PSTs successfully.

15 THE SPECIAL MASTER: And what about the OSTs?

16 MR. EDMONDSON: The OSTs, there were no OSTs  
17 that needed trimming, so those have mounted  
18 successfully as well.

19 THE SPECIAL MASTER: So those two -- and they  
20 mounted?

21 MR. EDMONDSON: Yes.

22 THE SPECIAL MASTER: Okay. Perfect. Run the  
23 search terms. Fantastic. Scan and repair finished  
24 hopefully.

25 I want the log file, though, of any issues

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1       you run into in that process. And I also want the  
2       file comparison counts for what -- for the PST --

3               MR. EDMONDSON: (Inaudible.)

4               THE REPORTER: I didn't hear that.

5               MR. EDMONDSON: Just the counts before and  
6       after for the repairs.

7               THE SPECIAL MASTER: And we are going to  
8       break every hour and a half for five minutes this  
9       time, because I realize, reading the transcript, that  
10      people were running out of steam. I apologize. I'm  
11      going to cognitively just make a break, just five  
12      minutes, though, but that way everybody wins.

13              Let's talk about BlackBerry. Who does  
14      BlackBerry here?

15              MR. CLARK: I do some BlackBerries.

16              THE SPECIAL MASTER: Off the record for a  
17      second.

18                      (OFF RECORD.)

19              THE SPECIAL MASTER: I'm going to bring you  
20      up to speed on the record so you are fully in the  
21      loop, and then I'll ask you my questions.

22              MR. CLARK: Okay.

23              THE SPECIAL MASTER: Before I do that, I'm  
24      going to let -- Plaintiff, do you want to share your  
25      concerns for the record around the BlackBerry before

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1 I --

2 MR. TOSTRUD: I'd like to just summarize, if  
3 I can.

4 THE SPECIAL MASTER: Go for it.

5 MR. TOSTRUD: We're on the record?

6 THE SPECIAL MASTER: Yes, on the record.

7 MR. TOSTRUD: So without getting into the  
8 extensive background of preservation notices --

9 THE SPECIAL MASTER: Curbing all of that,  
10 BlackBerry.

11 MR. TOSTRUD: -- carving all that out,  
12 Plaintiffs expected to receive several months, if not  
13 years, of BlackBerry messages between UMC executives  
14 and others relating to the substance of our lawsuit.

15 This is a meal break class action. We allege  
16 that UMC employees didn't receive all their meal  
17 breaks and weren't compensated when they missed those  
18 meal breaks.

19 So we expect that any discussion relating to  
20 that lawsuit that was done by messaging on  
21 BlackBerries and other personal digital assistants or  
22 mobile communication devices would be turned over to  
23 us so that we could review them in relation to our  
24 lawsuit.

25 When messages ultimately were produced to us

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1 on January 31, 2014, we only received approximately  
2 one month -- a one-month snapshot of BlackBerry  
3 messages. And we were informed by UMC's counsel  
4 several times, verbally and in writing, that there  
5 would be no more BlackBerry messages and that we had  
6 received everything that was there.

7 So we expect that there would be much more  
8 than simply one month's worth of BlackBerry messages,  
9 and we're hoping you can help us work through the  
10 issue.

11 THE SPECIAL MASTER: I'm going to supplement  
12 that because I've had the fortunate opportunity of  
13 reading over vast amounts of documents.

14 A BlackBerry server has more than just text  
15 messages; right? It has the BlackBerry messaging. It  
16 has the e-mail on it. It has the BBM messages. It  
17 can have all the files that are actually downloaded,  
18 depending on how it's configured.

19 The part that perplexes me -- and I read your  
20 backup policies, and I don't know if they're all  
21 followed. But assuming that in some relative sense  
22 that -- off the record.

23 (OFF RECORD.)

24 THE SPECIAL MASTER: Okay. Back on the  
25 record.

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1 BlackBerry's server, were you ever asked to  
2 preserve the BlackBerry server by anyone for specific  
3 users?

4 MR. CLARK: Yes, recently.

5 THE SPECIAL MASTER: How recently?

6 MR. CLARK: I want to say within two weeks or  
7 three weeks.

8 THE SPECIAL MASTER: Before that, had your IT  
9 people -- within your organization of UMC, does your  
10 CIO understand that you have a BlackBerry server?

11 MR. CLARK: Yes.

12 THE SPECIAL MASTER: Does he understand  
13 relatively how it works?

14 MR. CLARK: I don't know.

15 THE SPECIAL MASTER: Okay. Let's try this  
16 differently. Does he know what your preservation  
17 policy is supposed to be for the BlackBerry server and  
18 the communications stored on it? Have you been told  
19 that policy?

20 MR. CLARK: No.

21 THE SPECIAL MASTER: Okay. Is there any  
22 written policy, Counsel, for UMC that you're aware of  
23 as to what the preservation of records for BlackBerry  
24 servers should be at UMC?

25 MS. WITTY: Specifically for the BlackBerry

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1 server, no.

2 THE SPECIAL MASTER: What about for e-mail  
3 communication?

4 MS. WITTY: There should be, yes.

5 THE SPECIAL MASTER: Okay. What about for  
6 instant message communications through the BlackBerry  
7 server? Not text messages. Instant message  
8 communication, their communication backup policy, so  
9 to speak.

10 MS. WITTY: I don't know of anything that  
11 specifically touches on instant messaging.

12 THE SPECIAL MASTER: You just ask UMC --  
13 okay. I assume, since your CIO knew that you had a  
14 BlackBerry server and that he understands the basics  
15 of how a BlackBerry server operates, how -- what  
16 did -- can you explain to me, at a high level and then  
17 we will go down, how is your BlackBerry server -- what  
18 version are you running, how is it configured. Like  
19 start me at the beginning.

20 MR. CLARK: At the beginning of all the  
21 BlackBerries involved, or the current?

22 THE SPECIAL MASTER: Start with 2011.

23 MR. CLARK: 2011, probably running the old  
24 version of BlackBerry 5.0.3 --

25 THE SPECIAL MASTER: 5?



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1 THE REPORTER: 5.

2 THE SPECIAL MASTER: .0.3.

3 MR. CLARK: -- Service Pack 3 --

4 THE SPECIAL MASTER: Service Pack 3, okay.

5 MR. CLARK: -- talking to Exchange 2003.

6 That was running on a vertical environment.

7 THE SPECIAL MASTER: What?

8 THE REPORTER: What?

9 MR. CLARK: Running on a vertical environment  
10 on a VM.

11 THE SPECIAL MASTER: On a dedicated VM or  
12 a --

13 MR. CLARK: Dedicated VM. The database was  
14 on (inaudible) cluster for the BlackBerry.

15 THE REPORTER: I didn't hear that. "Was on  
16 a" what?

17 MR. SCHAIBLEY: Database was running on an  
18 SQL cluster.

19 THE SPECIAL MASTER: Was it a dedicated  
20 cluster?

21 MR. CLARK: No. It's a cluster throughout a  
22 lot of databases in the archives.

23 THE SPECIAL MASTER: So it's got -- when you  
24 back up the -- when this cluster backs, does it back  
25 everything?

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1 MR. CLARK: What, now?

2 THE SPECIAL MASTER: When the SQL server  
3 backs up, does the cluster back up everything?

4 MR. LATTIN: It would be all the database on  
5 the cluster.

6 MR. CLARK: Yes.

7 THE SPECIAL MASTER: So everything in there?  
8 There's no carve-outs?

9 MR. CLARK: Yes, it doesn't -- it's all in a  
10 suite. And then once it's on the server  
11 (inaudible) --

12 (Reporter requesting clarification.)

13 THE SPECIAL MASTER: Sorry, one sec. You've  
14 just got to talk slowly.

15 THE REPORTER: I'm sorry. I'm having trouble  
16 understanding you.

17 THE SPECIAL MASTER: Why don't you come up  
18 and switch seats.

19 THE REPORTER: Yes, if you could come closer,  
20 that might help.

21 MR. CLARK: Okay. It talks to Exchange 2003.  
22 I'm responsible for the server up and running, the  
23 infrastructure, and to make sure the application is  
24 running. That's pretty much it.

25 In terms of connecting to Exchange, I do not

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1 set policies on it.

2 THE SPECIAL MASTER: Who does?

3 MR. CLARK: That would be security's purview,  
4 I believe.

5 MR. SCHAIBLEY: The policies that were set on  
6 it were set by our predecessors, and that's how they  
7 were running.

8 THE SPECIAL MASTER: Do we know what those  
9 policies are?

10 MR. SCHAIBLEY: I can pull them up and tell  
11 you what they are, but primarily the policies, looking  
12 at them, were strictly password-related and  
13 update-related.

14 THE SPECIAL MASTER: So there was no specific  
15 data enforcement policy?

16 MR. SCHAIBLEY: No.

17 THE SPECIAL MASTER: Well, just pull them up  
18 for my own edification and send them to myself and to  
19 counsel.

20 Returning to BlackBerry, BlackBerry Messaging  
21 Agent, is that included?

22 MR. CLARK: BlackBerry Messaging Agent?

23 THE SPECIAL MASTER: Yes.

24 MR. CLARK: Is that like the PIN messages?

25 THE SPECIAL MASTER: Yes.

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1 MR. CLARK: I did not do any configuration on  
2 the server for that.

3 THE SPECIAL MASTER: But is it -- I mean, it  
4 comes installed and running. Did you let it run?

5 MR. CLARK: Yes. I would imagine that the  
6 PIN messages for -- between RIM NOCs and the  
7 Blackberries themselves. I don't think it touched our  
8 server.

9 THE SPECIAL MASTER: And what about  
10 BlackBerry messaging itself, the BBM messaging?

11 MR. CLARK: The BBM messaging, I don't think  
12 there was anything -- I don't know.

13 THE SPECIAL MASTER: Best to stick with "I  
14 don't know" and "I'll go check."

15 I'm going to repeat myself. If you do not  
16 know, I have no qualms with, "I do not know. I need  
17 to go check." I realize you're not sitting in front  
18 of your terminal and that I am asking you about server  
19 configurations, and I'd rather you go check rather  
20 than you make a statement and then we come up with a  
21 theory and it doesn't work.

22 MR. CLARK: Sure.

23 THE SPECIAL MASTER: Okay. So in 2011, you  
24 were running SQL cluster 2003. Was it push or pull?

25 MR. CLARK: Push or pull?

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1                   THE SPECIAL MASTER: To the Exchange  
2                   environment.

3                   MR. CLARK: I don't know.

4                   THE SPECIAL MASTER: Can you check, or who  
5                   would know if you don't?

6                   MR. CLARK: I would have to check.

7                   THE SPECIAL MASTER: All right. So then,  
8                   please check. I want to know -- and what I'm talking  
9                   about specifically is, was it pulling the e-mail  
10                  message -- how was it synchronizing with your Exchange  
11                  environment?

12                  MR. CLARK: My understanding is that with the  
13                  RIM NOC being involved, when you register to the BES,  
14                  any messages come off of the handheld, goes to the  
15                  Sprint, which connects to the RIM NOC.

16                  (The reporter requested clarification of.  
17                  Mr. Clark by way of repeating his last comment as  
18                  follows:)

19                  MR. CLARK: The Sprint network, which would  
20                  connect to the RIM NOC. So the phone, being on  
21                  Sprint, would receive and send messages through  
22                  Sprint, then talk to RIM NOC, which would talk to our  
23                  BlackBerry server back and forth, two-way  
24                  communication.

25                  THE SPECIAL MASTER: Is that for messages or

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1 e-mails?

2 MR. CLARK: E-mails.

3 THE SPECIAL MASTER: Did you get all of that?

4 THE REPORTER: Yes.

5 THE SPECIAL MASTER: So I need to know what  
6 BlackBerry server components you have up and running.

7 MR. CLARK: Okay.

8 THE SPECIAL MASTER: Okay. From 2011 through  
9 present, I want to know the components. Okay?

10 Now I want to understand something.

11 Mr. Espinoza -- oh, wait. Let's go -- let me  
12 go through a -- so then a user, I mean, sends an  
13 e-mail message from their BlackBerry. Walk me through  
14 how that works within the way your current -- in 2011,  
15 with the 2003 configuration, which you are going to  
16 figure out was push or pull, how that works.

17 MR. CLARK: You want me to explain that?

18 THE SPECIAL MASTER: Yes. Walk me through  
19 that example. I write an e-mail message, and I'm a  
20 UMC employee with a UMC BlackBerry.

21 MR. CLARK: My understanding is that the  
22 handheld, being BlackBerry, if you write a message,  
23 and you hit send, it sends it out, and it goes --

24 THE SPECIAL MASTER: To the BlackBerry  
25 server?

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1 MR. CLARK: To the BlackBerry server and  
2 passes it through to the Outlook.

3 THE SPECIAL MASTER: It stores a copy of it.

4 My question is, is your BlackBerry server  
5 configured to store a copy of that message -- well, by  
6 default, it stores it. So if you haven't touched it,  
7 it stored it.

8 MR. CLARK: I don't know, but I'll try.

9 THE SPECIAL MASTER: So they send the -- I  
10 write an e-mail -- let's just -- for hypothetical, a  
11 UMC employee writes an e-mail to his wife. That  
12 e-mail goes to your BlackBerry server. You are going  
13 to check to figure out if the BlackBerry stores a copy  
14 of that message and how long it's -- the policy of how  
15 long it's storing it and the other related data.

16 We'll get to the backup piece of this, by the  
17 way, in a second.

18 It then is hanging out in the BlackBerry  
19 server, saying come (inaudible) --

20 (Reporter requesting clarification.)

21 THE SPECIAL MASTER: It's hanging out in the  
22 BlackBerry server, my message to my wife. Okay. But  
23 it needs to get to her. So where does it go next?

24 MR. CLARK: The BlackBerry server passes  
25 through a connection to the Exchange Outlook.

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1 THE SPECIAL MASTER: Okay. And then on the  
2 Outlook, that's where Mr. -- you -- your duties -- is  
3 it your duties or his duties? So then -- and that's  
4 when you explained what happened last time.

5 MR. SCHAIBLEY: Yes.

6 THE SPECIAL MASTER: So then do you just  
7 want, for the record, to explain how it gets to my  
8 wife from -- explain how it gets out of UMC.

9 MR. SCHAIBLEY: When it goes from UMC's  
10 Exchange server, if it is destined for outside the  
11 network --

12 THE SPECIAL MASTER: Outside, that's the  
13 point.

14 MR. SCHAIBLEY: -- it will pass through to  
15 our external mail filter and, from there, make a  
16 connection out to whatever destination mail server  
17 it's going to.

18 THE SPECIAL MASTER: So now, the mail  
19 culture, do you use Postini?

20 MR. SCHAIBLEY: We currently use McAfee  
21 Ironmail.

22 THE SPECIAL MASTER: How long have you been  
23 using McAfee Iron?

24 MR. SCHAIBLEY: I don't know the date that it  
25 was installed. It was before I got there.



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1 THE SPECIAL MASTER: So we can say May of  
2 2012?

3 MR. SCHAIBLEY: Yes -- June of 2012.

4 THE SPECIAL MASTER: June, thank you. June,  
5 not May. June of 2012. I would like to know what was  
6 there prior. So counsel, please.

7 The reason why I'm asking is, Postini, for  
8 example, archives every e-mail --

9 I am supposed to speak slowly. I apologize  
10 to the court reporter.

11 Postini archive can be configured to archive  
12 every e-mail that goes in and out, and it just keeps a  
13 copy sitting there. Law firms particularly love that  
14 feature. All right.

15 And the e-mail just sits there and  
16 accumulates for 365 days, and then they get a bill and  
17 they have to pay more money and they are like, "No  
18 way, purge it." And then, day 366, whatever was there  
19 from day 1, first in, first out.

20 I want to know how McAfee is set up, and I  
21 want to know how it existed prior to you joining.

22 MR. SCHAIBLEY: I will find out prior  
23 configurations before -- and what we had before I  
24 arrived.

25 Currently, the Ironmail does not archive

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1 anything. It passes it and goes. If it is unable to  
2 make the initial connection, it will retry for a  
3 week's period and purge.

4 THE SPECIAL MASTER: Okay. Fair enough.

5 Figure out where it was in 2011, just for my  
6 own edification.

7 Okay. And then it goes outside and  
8 theoretically hits another mail server, then another  
9 mail server, then ends up at my wife?

10 MR. SCHAIBLEY: Yes.

11 THE SPECIAL MASTER: Unless you're at Google  
12 and you own the network, and then you don't have a  
13 problem.

14 Okay. What if it's internal? So from -- I'm  
15 sending it, pretend my wife hypothetically works at  
16 UMC.

17 MR. SCHAIBLEY: If it is an internal e-mail,  
18 once it hits --

19 THE SPECIAL MASTER: Once it hits his. So  
20 we hit your BlackBerry -- I'm assuming -- sorry.

21 Mr. Clark, I'm assuming that if it's an  
22 internal communication and I wrote an e-mail message,  
23 not a message but an e-mail message as a UMC employee  
24 to another UMC employee, there is no difference; is  
25 that correct?

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1 MR. CLARK: If you are running an e-mail, it  
2 depends on where you are running it from. If you're  
3 not on the --

4 THE SPECIAL MASTER: The BlackBerry.

5 MR. CLARK: If you are running it from the  
6 BlackBerry, it should be no different; that's correct.

7 THE SPECIAL MASTER: So I'm running a  
8 BlackBerry to send to my wife, who is an employee at  
9 UMC, and she get -- and I'm sending her an e-mail from  
10 my BlackBerry within your domain. Okay? Are you with  
11 me with my hypothetical so far?

12 MR. CLARK: Yes.

13 THE SPECIAL MASTER: It is the exact same,  
14 just so we are clear. Now, what about once it hits  
15 the Exchange?

16 MR. SCHAIBLEY: Once it hits the Exchange  
17 server, if it is an internal mailbox, it will pass it  
18 to the -- whichever database the mailbox is located on  
19 and deliver it to the inbox.

20 THE SPECIAL MASTER: And that's e-mail  
21 message?

22 MR. SCHAIBLEY: Correct.

23 THE SPECIAL MASTER: If you have -- if  
24 Plaintiff has any question at any point, feel free to  
25 speak, because now is the time to ask.

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1                   Okay. And that's -- now, it's still storing  
2                   the SQL -- the whole SQL thing. It's still all the  
3                   same for the BlackBerry. For Exchange, internal,  
4                   external, is there any difference, servers?

5                   MR. SCHAIBLEY: What do you mean?

6                   THE SPECIAL MASTER: Sometimes people, when  
7                   they route -- so I have an Exchange environment, and I  
8                   look at the sender. Sometimes they'll put additional  
9                   levels of filtering on it before it goes outbound  
10                  versus inbound -- I mean, internal. I'm sorry.

11                  MR. SCHAIBLEY: We had a single bridgehead  
12                  Exchange server that all messages were tracked -- were  
13                  passed to, whether it was --

14                  THE SPECIAL MASTER: Okay. So no gateway or  
15                  anything like that?

16                  MR. SCHAIBLEY: -- whether it was inside or  
17                  outside, and that bridgehead would then either forward  
18                  it outside to the mail filter, external mail filter,  
19                  or internally to the -- whichever server hosted the  
20                  database to mailbox.

21                  THE SPECIAL MASTER: And there are no  
22                  gateways?

23                  MR. SCHAIBLEY: No.

24                  THE SPECIAL MASTER: Okay. All right. So I  
25                  then delete my e-mail message I wrote on my BlackBerry

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1 to my internal -- there's two situations, here; right?  
2 I delete the e-mail message that I just wrote to the  
3 external-facing employee, to external third party from  
4 my BlackBerry.

5 Would it -- I'm assuming no -- we'll get to  
6 back up in a second.

7 If it's not backed up, there is nowhere else  
8 it would sit once it's purged from the Exchange  
9 server, which is on the two-week cycle.

10 I write the e-mail message on my phone to  
11 whoever, "Let's go to lunch," hit send. It goes  
12 through the BlackBerry environment, gets to the  
13 Exchange, gets sent out. I then delete it from my  
14 BlackBerry for whatever reason I wanted.

15 It doesn't -- what happens? Where does it --  
16 what happens to that deleted message, in your  
17 environment, on the BlackBerry level, with the  
18 BlackBerry server, when I delete it?

19 MR. CLARK: BlackBerry?

20 THE SPECIAL MASTER: When I delete that  
21 message, that e-mail message I just wrote, on my  
22 BlackBerry.

23 MR. CLARK: If you delete it on your  
24 BlackBerry, it depends on how the BlackBerry device is  
25 set up to sync. It may either leave it on the Outlook

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1 Exchange mailbox...

2 THE SPECIAL MASTER: But your BlackBerry  
3 server would have a copy of it?

4 MR. CLARK: I don't know how it's set.

5 THE SPECIAL MASTER: I mean, the default is  
6 to store a copy.

7 MR. CLARK: I don't know if the default is  
8 set that way. I'd have to check.

9 THE SPECIAL MASTER: So -- and then it hits  
10 Exchange, and does Exchange keep -- cache a copy, or  
11 what's --

12 MR. SCHAIBLEY: If it is synced to sync the  
13 folders, it will sync into the sent items of the  
14 mailbox.

15 THE SPECIAL MASTER: I -- fair point. I'm  
16 making an assumption. Are the folders set to sync?

17 MR. SCHAIBLEY: I don't know the default on  
18 that.

19 THE SPECIAL MASTER: Do you know the default  
20 on that?

21 MR. CLARK: I don't know the default on that.  
22 Handheld can override the Exchange mailbox. It  
23 depends on how the handheld device is set up.

24 THE SPECIAL MASTER: I'm not talking about  
25 the phone. I'm talking about the syncing between the

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1 servers.

2 MR. CLARK: Okay. I would have to check on  
3 the BB'd VM if -- how it syncs with --

4 THE SPECIAL MASTER: I want to know if the  
5 Exchange folders sync to the BlackBerry server  
6 folders. I get the device piece of it. Do you  
7 understand my question as well? And you can check as  
8 well?

9 Now, returning back to the original question,  
10 which was you were asked two weeks ago -- well,  
11 actually, I forgot. Internal employees, I sent it to  
12 an internal employee on my BlackBerry, and I delete  
13 it. What happens, once we figure out if they sync  
14 properly? Because what I'm trying to figure out is,  
15 if I write a message on my BlackBerry, does it end up  
16 in my sent folder in the Exchange environment? Can  
17 either one of you answer that question?

18 MR. SCHAIBLEY: If the handheld device is  
19 configured to sync folders correctly, yes, it would  
20 end up there in your sent items.

21 THE SPECIAL MASTER: But the BlackBerry  
22 server can also be configured to do the syncing  
23 itself?

24 MR. SCHAIBLEY: As we said, we would have to  
25 look into the configuration.

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1 THE SPECIAL MASTER: Okay. I would like to  
2 know that by this Friday.

3 You understand the obvious problem here;  
4 right? If you are telling me that I can send and  
5 delete e-mails from my BlackBerry that exist nowhere  
6 else but in my BlackBerry environment, we have a  
7 problem.

8 MR. CLARK: I understand what you are saying.

9 THE SPECIAL MASTER: Okay. So, well, then,  
10 you got your -- you need to figure out by Friday,  
11 convey it to counsel by Friday so they can convey it  
12 to me, because I need to know whether or not it is  
13 possible to write e-mail messages in your environment  
14 using a mobile device, the only place they exist in  
15 the whole world is on the mobile device, and then once  
16 they are deleted, they are gone. Does that make --  
17 and your lawyers definitely want to know.

18 So -- and I'll be very frank. I need --  
19 maybe you guys aren't the right people, so I am just  
20 going to preserve it for the record and not  
21 necessarily leave it for you guys since you guys are  
22 the ones doing the work.

23 UMC's senior IT stakeholders need to figure  
24 out and start communicating with counsel immediately  
25 what's going on, because you've been before this Court



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1 on multiple occasions, and your lawyers have relied  
2 upon what you have told them.

3 And I understand you guys are doing your job,  
4 and you guys are doing a good job at it. But there is  
5 a huge disconnect behind what your senior IT  
6 stakeholders are telling the lawyers and what they are  
7 telling the Court.

8 And it needs to be remedied immediately,  
9 because it is wasting -- as much as I'm sure everybody  
10 enjoys spending the day together and the weekends and  
11 everything else, it's not a really acceptable use of  
12 anyone's time. But more importantly, it's  
13 disrespectful to the Court, and the Court is entitled  
14 to the respect from UMC's senior IT stakeholders to  
15 know and to have a conversation with you guys and  
16 understand what's going on so that when they talk to  
17 their lawyers and UMC's counsel, they give them  
18 accurate information.

19 Because your -- both parties -- and I keep --  
20 and I appreciate Plaintiff for keeping the -- their  
21 frustrations and showing cooperative things, but I  
22 want to make it clear, there have been extensive  
23 conversations before the Court about the preservation  
24 of mobile communications. And I promise you that your  
25 lawyers would have loved to have been able to rely on

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1        what the senior IT stakeholders at UMC were telling  
2        them.

3                But the first time we're finding out that we  
4        don't even know if the e-mail messages --

5                THE REPORTER:    Slow down a little.

6                THE SPECIAL MASTER:    -- we don't even know  
7        that if the e-mail messages that a senior executive  
8        writes on their mobile device are actually being  
9        stored anywhere in the enterprise besides those mobile  
10       devices, I promise you UMC's counsel has been nothing  
11       but ethical and up-front and honest, and they need to  
12       know that.    We shouldn't be finding out now, today.

13               And so it's not directed towards you, but  
14       your senior IT stakeholders that have been passing  
15       this information on.    It's not acceptable, and it must  
16       be fixed immediately.

17               Now, since you are sitting here before me and  
18       I can pick your brain myself and I actually know what  
19       you're talking about, I'm going to take full advantage  
20       of it, because I fully plan to get this done.

21               You'll check into those policies by Friday.

22               When you push a new -- so I understand how it  
23       sort of works.    Now, I want to talk about messaging.

24               For messaging, now there's two types.

25       There's text messaging, right, which is SMS, which I

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1       assume you don't run an SMS -- do you run or control  
2       the SMS text message? "No"; right?

3               MR. CLARK: No.

4               THE SPECIAL MASTER: You are not big enough.  
5       I would be surprised if you did. Some companies have  
6       their own relays at actual Sprint, they're that big,  
7       but you don't.

8               So I'm assuming that when someone writes a  
9       text message and sends it to someone else, the only  
10      place that sits, in all of UMC's world, the text  
11      message, the SMS text message, meaning the -- that's  
12      getting sent over the network, right, is going through  
13      the telco network; right? Is that correct?

14              MR. CLARK: Yes.

15              MR. SCHAIBLEY: Yes.

16              THE SPECIAL MASTER: Okay. Now, an internal  
17      BBM message, be it PIN or otherwise, is going to hit  
18      your server because the telco -- the PIN, maybe not.  
19      The PIN you are going to look into.

20              But the BBM message, if you have the BBM  
21      messaging server activated, and that module, it passes  
22      through the BBM server; that's how messaging works.  
23      That's why large businesses love BlackBerry; right?  
24      Because then nobody can actually see what you are  
25      messaging but the people within your enterprise;

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1 right?

2 So do you know how BBM messaging is, if it  
3 is, configured within UMC?

4 MR. CLARK: I don't know. I'd have to check.

5 THE SPECIAL MASTER: Can you please check and  
6 let counsel know by this Friday?

7 And, Counsel, I expect to hear from you on  
8 Friday as to how it's configured. I want you to be  
9 able to explain it to your lawyers so they know what  
10 is being said, so you might have to be a little  
11 patient. But it is very, very important.

12 Are there any -- do you lock down the  
13 BlackBerry devices at all from installing third-party  
14 apps or anything else?

15 MR. CLARK: I don't know because I'm not over  
16 the purview of the IT policies that you can set on the  
17 BlackBerry.

18 THE SPECIAL MASTER: Who is over that  
19 purview?

20 MS. WITTY: That would be Susie Kisner.

21 THE SPECIAL MASTER: And who is she? Sorry  
22 for my ignorance, but...

23 MS. WITTY: I'm not sure her exact title.

24 MR. LATTIN: Manager. She's over the  
25 operations side managing.

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1 THE SPECIAL MASTER: So she sets that policy?

2 MS. WITTY: Yes.

3 THE SPECIAL MASTER: Has she provided counsel  
4 with that policy?

5 MR. CLARK: My understanding is she's Dean's  
6 predecessor, and the predecessor of the IT director  
7 set the policy on the BlackBerry.

8 THE SPECIAL MASTER: Okay. But he's no  
9 longer there, so someone's got to be -- either what he  
10 set is still in force or she's reset it. So if she  
11 hasn't reset it, she must have what it was beforehand.

12 Somewhere within your organization someone  
13 must know what the policy is; right?

14 MS. WITTY: And she would be available by  
15 phone, if you'd like to --

16 THE SPECIAL MASTER: Yes. Let's call her.  
17 Let's call her after our first break. Just let her  
18 know we'll be calling her.

19 Court Reporter, can you let me know when it's  
20 been an hour and a half, please?

21 THE REPORTER: Yes.

22 MR. TOSTRUD: Just one quick question.

23 THE SPECIAL MASTER: If Plaintiff has any  
24 questions, technical or otherwise, feel free to ask.

25 MR. TOSTRUD: Okay. I'd like to put on the

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1 record and have these gentlemen identify the senior IT  
2 stakeholders that you just mentioned.

3 THE SPECIAL MASTER: I thought they were  
4 identified for the record.

5 MR. TOSTRUD: I don't know that they have  
6 been.

7 THE SPECIAL MASTER: Well, yes, let's go  
8 through --

9 MR. TOSTRUD: And -- according to them. They  
10 know who their bosses are and the people that are in  
11 charge of --

12 THE SPECIAL MASTER: Okay.

13 MS. WITTY: Would it be more efficient to  
14 provide an IT organizational chart?

15 THE SPECIAL MASTER: Org chart? Wouldn't  
16 that -- would that suffice?

17 MR. TOSTRUD: I'd like that, but I mean,  
18 we're here and --

19 THE SPECIAL MASTER: I'm going to get --  
20 we're going to -- I'm not going to go through the  
21 whole entire IT department, but we will get who is in  
22 charge of what within -- relative, but I want to see  
23 the actual org chart because they might not  
24 actually -- how big is your IT Department?

25 MR. SCHAIBLEY: Currently approximately 103

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1 people.

2 THE SPECIAL MASTER: Yes. So they might not  
3 know all of the -- I'd like to get an org chart.

4 But I want to quickly understand three quick  
5 things, which I think is what he's interested in.

6 CIO, how does the BlackBerry link up through  
7 your organization, the BlackBerry in Exchange  
8 environment? You have a NOC support? You have a --  
9 how does it work? Do you have a manager for  
10 enterprise services, manager for messaging? I'm just  
11 trying to understand basically if Susan is the one  
12 writing the policy and she didn't write the policy and  
13 it's from her predecessor, who is actually, at the end  
14 of the day, responsible for managing the BlackBerry in  
15 Exchange environment?

16 MR. SCHABLEY: At the end of the day, it  
17 would be Susie.

18 THE SPECIAL MASTER: So if the CEO loses his  
19 BlackBerry one night because he's out doing whatever,  
20 and he wants it wiped, he goes, sees her?

21 MR. SCHABLEY: Does PBX handle the  
22 BlackBerry?

23 MR. CLARK: PBX is the first line of  
24 BlackBerry handheld, and they are the ones who add the  
25 people to the BlackBerry Enterprise Server.

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1                   My understanding is that I'm responsible for  
2           the infrastructure because I'm the storage VMware  
3           guy --

4                   THE SPECIAL MASTER:   Storage VMware guy.

5                   MR. CLARK:   -- and that it's IT security  
6           that's responsible for the policy and the procedures  
7           on the BES.

8                   THE SPECIAL MASTER:   So let me rewind here.

9                   PBX -- we went over this last time.   PBX,  
10          walk me through.   I'm a new employee.   Let's start at  
11          the beginning.   We have two scenarios.

12                   CEO or senior VP loses his phone, his  
13          BlackBerry.   Who does he see about wiping it and  
14          getting a new one within your organization?

15                   MR. SCHAIBLEY:   Someone at that level would  
16          go through the IT director, which is Lund Richardson,  
17          or Susie Kisner, who is the manager over that area.

18                   From there, they would work with PBX to --

19                   THE SPECIAL MASTER:   Who is the individual?  
20          You?

21                   MR. SCHAIBLEY:   Individual, Trina  
22          Burrage-Simon, B-u-r-r-a-g-e, hyphen, Simon.

23                   And Trina would work on wiping the old  
24          BlackBerry and issuing the new BlackBerry.

25                   THE SPECIAL MASTER:   All right.   I get it.



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1                   So then is Trina involved in syncing the  
2           BlackBerry data at all since she can wipe it?

3                   MR. SCHAIBLEY: Yes, yes.

4                   THE SPECIAL MASTER: What's her role?

5                   MR. SCHAIBLEY: She's the PBX manager --  
6           supervisor.

7                   THE SPECIAL MASTER: And so I get this -- off  
8           the record for a second.

9                   (OFF RECORD.)

10                  THE SPECIAL MASTER: Let's go back on the  
11          record to record that, because now it makes sense.

12                  Okay. So I understand, can you please  
13          explain the different roles for the PBX team and the  
14          BlackBerry server team?

15                  MR. SCHAIBLEY: The PBX team is the first  
16          line of support and manages the BlackBerry handheld  
17          distribution from an end-user perspective.

18                  The server team, Jason Clark manages the  
19          functionality of the server itself to ensure that it  
20          is up and running.

21                  THE SPECIAL MASTER: Okay. So let me  
22          understand something. If I want to get my messages  
23          and I want them ported over to my new phone, who does  
24          that?

25                  MR. SCHAIBLEY: PBX.

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1 THE SPECIAL MASTER: So then I need to also  
2 have PBX on the phone?

3 MS. WITTY: That would be Susie as well.

4 MR. SCHAIBLEY: Yes.

5 THE SPECIAL MASTER: Perfect. And so Susie  
6 has the ability, then, to port or whatever -- however  
7 she has it configured, does she work with the  
8 BlackBerry server environment? She must.

9 MR. CLARK: She has access (inaudible) --

10 THE REPORTER: Didn't get that.

11 MR. CLARK: -- and administers from the PBX  
12 perspective.

13 THE SPECIAL MASTER: Yes, but she must have  
14 admin rights. In order to port it over, I mean,  
15 someone's got to have admin rights to add a device and  
16 sync messages?

17 MR. CLARK: Yes, they have admin rights to  
18 the handheld.

19 THE SPECIAL MASTER: And the BlackBerry  
20 server?

21 MR. CLARK: I don't know if there are admins  
22 on the server.

23 THE SPECIAL MASTER: Okay. And she would  
24 be -- so then you didn't get any notification until  
25 two weeks ago that you needed to preserve or collect

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1 the BlackBerry, the data stored in the BlackBerry  
2 server, which you are going to figure out what that is  
3 by Friday?

4 MR. CLARK: Yes.

5 THE SPECIAL MASTER: And you are the right  
6 person to know what should be in there within UMC?  
7 You are the person responsible for the policy, for  
8 administering the policy, not setting it, but  
9 administering it?

10 MR. CLARK: No, I do not administer the  
11 policy on the BlackBerry Enterprise Server.

12 THE SPECIAL MASTER: Who does that? Susie?

13 MR. CLARK: It was Brandon and Susie in the  
14 past.

15 MR. SCHAIBLEY: So IT would be Susie at this  
16 point. The policy has not been -- since I've been  
17 there, the policy has not -- the IT policy that can be  
18 assigned on the BlackBerry server have not changed  
19 since their original configuration by our  
20 predecessors, with the exception of, as Jason said, a  
21 couple of weeks ago, of ensuring the continued  
22 collection of all material.

23 THE SPECIAL MASTER: Wait. So -- yes. So  
24 you've -- since you have heard of this, you have  
25 started preserving all of the materials, correct, on

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1 the BlackBerry server environment?

2 MR. CLARK: I was not told to preserve all  
3 materials from the BlackBerry --

4 THE SPECIAL MASTER: For the 26 custodians  
5 that are at issue. Let me make it simple. I'll ask  
6 you the question about what was told. Let me take  
7 care of the most important thing:

8 I'm ordering you to preserve all mobile  
9 device communications stored on any PBX, BlackBerry,  
10 or magical cloud that is within your ambit, purview,  
11 or control immediately relating to UMC in this  
12 litigation.

13 Is there any confusion?

14 MR. CLARK: No. I understood when the CIO  
15 called me, specific individuals had to be on the  
16 BlackBerry server today, they have been preserved  
17 since then.

18 THE SPECIAL MASTER: Has anybody provided you  
19 a list of these individuals?

20 MR. SCHAIBLEY: Do you have the full list?

21 MR. CLARK: I have an e-mail from the CIO of  
22 people who are on the BlackBerry, but I don't think it  
23 was 26.

24 THE SPECIAL MASTER: Okay. And Susie --  
25 could Susie collect e-mail or messages from the PBX

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1 environment that are on the BlackBerry?

2 MR. CLARK: (No response.)

3 THE SPECIAL MASTER: We'll ask Susie. Fair  
4 enough. Best say, "I don't know." Remember, stick  
5 with the "I don't know" if you don't know.

6 Okay. Let's switch seats with backup, unless  
7 Plaintiff has any more questions about BlackBerry.

8 MR. TOSTRUD: I think I do. First of all, I  
9 have a comment for the record, and then I have a  
10 question, and then I'd like to put a document in as an  
11 exhibit.

12 THE SPECIAL MASTER: Okay. Can I see the  
13 document first? And show a copy to...

14 MR. TOSTRUD: Yes. (Handed to counsel.)

15 MR. GODINO: We think it's relevant to the  
16 retention of information on the BlackBerry.

17 THE SPECIAL MASTER: I got it.

18 MR. TOSTRUD: I would like to show this to --

19 THE SPECIAL MASTER: I'll do it.

20 MR. TOSTRUD: Okay.

21 THE SPECIAL MASTER: Is there anything else  
22 besides showing him and asking him?

23 MR. TOSTRUD: No.

24 THE SPECIAL MASTER: Have you seen this,  
25 counsel for UMC? What I'm looking at, just for the

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1 record, is the record retention and disposal effective  
2 as of February 1, 2008, and revised January of 2014.

3 MS. FOLEY: I'm not sure if I've seen it.

4 THE SPECIAL MASTER: I'm not saying that you  
5 haven't -- I'm just asking if they have seen it. I'm  
6 going to ask you about the document, clearly.

7 But let's go off record for a second so you  
8 can look at it.

9 (OFF RECORD.)

10 THE SPECIAL MASTER: Back on the record.

11 Before I admit it in, do you have any  
12 questions, Counsel Witty?

13 MS. WITTY: There is no administrative  
14 approval listed on this. The policies and procedures  
15 identified by UMC generally have who is responsible  
16 for...

17 THE SPECIAL MASTER: Can you provide any  
18 clarification as to this document?

19 MR. TOSTRUD: Sure.

20 THE SPECIAL MASTER: Was this provided to you  
21 or produced?

22 MR. TOSTRUD: It was a record that was not  
23 produced by defendant which we believe is clearly  
24 relevant.

25 THE SPECIAL MASTER: Well, I would agree with

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1       you.

2               MR. TOSTRUD: It was produced to us by our  
3       plaintiff, Daniel Small, who I believe identified that  
4       document or was provided it either via e-mail or it  
5       was available on the intranet, UMC intranet.

6               THE SPECIAL MASTER: Counsel Witty, can he  
7       authenticate that and provide...

8               MR. TOSTRUD: Absolutely. I would hope that  
9       it's --

10              THE SPECIAL MASTER: I agree with you, but  
11       just -- if he -- I just want -- Counsel Witty, if you  
12       think they have from Mr. Small and can authenticate  
13       the record --

14              MS. WITTY: We're not opposed, and we just  
15       would state our objection on the record that it does  
16       not follow the traditional form; that even its  
17       availability for review would not necessarily make it  
18       the binding policy.

19              THE SPECIAL MASTER: Okay. Do you have any  
20       objection or do you wish to respond?

21              MR. TOSTRUD: Well, I think we need to get an  
22       answer as to whether it is a binding policy or not.  
23       It appears to be a business record. It's available to  
24       an hourly paid employee of UMC. It directly addresses  
25       all employees; it relates to all business records;

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1       that's the purpose of the document.

2               Page 2 identifies that it relates to business  
3 records with respect to --

4               MS. WITTY: I would state that he's going to  
5 the content of this document.

6               MR. TOSTRUD: -- with respect to all  
7 mediums --

8               THE SPECIAL MASTER: All right. One second.  
9 Before we get into the substance of the document,  
10 which is -- I'm not quite yet there.

11              MS. FOLEY: This was not produced in the  
12 regular course of discovery, so we are entitled to say  
13 we don't know. We don't --

14              THE SPECIAL MASTER: I have no problem with  
15 you saying "I don't know"; I don't have any qualms  
16 with you saying "I don't know," because I asked for  
17 the record retention policies and schedules, and this  
18 was not what I received.

19              MS. FOLEY: Right.

20              THE SPECIAL MASTER: So I mean, I fully  
21 recognize there is an issue here.

22              MR. TOSTRUD: Just so I'm clear, this hasn't  
23 been produced to you either?

24              THE SPECIAL MASTER: This particular document  
25 has not. I did receive and request, I believe -- I



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1 don't know if I received it yet, but if not, I'm  
2 requesting the like document, but I thought I had been  
3 provided it.

4 MS. FOLEY: Is -- does that have a Bates  
5 stamp on it?

6 THE SPECIAL MASTER: There's no Bates stamp.

7 MS. FOLEY: Not on -- I'm sorry. I thought  
8 you were at the other one. You were --

9 THE SPECIAL MASTER: Oh, the other one that  
10 you provided, you provided me -- did you provide me  
11 the record retention?

12 MS. WITTY: No. They fall underneath County  
13 record retention policies. It's a 500-some-odd-page  
14 document.

15 THE SPECIAL MASTER: Can you do me a favor?  
16 Can you find that? And can you also -- let's go off  
17 the record for a second.

18 (OFF RECORD.)

19 THE SPECIAL MASTER: Okay. Let's go back on  
20 the record.

21 I'm going to request that you provide this in  
22 an affidavit, and I will take it right now as  
23 Exhibit 1, subject to the receipt of an affidavit  
24 provided by you. I would like the affidavit no later  
25 than this coming Friday, if at all possible.

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1 MR. GODINO: Exhibit 9?

2 THE SPECIAL MASTER: Exhibit -- thank you.

3 Will you please provide it to the court  
4 reporter? Just the -- not the new document. Just  
5 the -- with Appendix A, to the court reporter.

6 MR. TOSTRUD: I only have two copies, so I'll  
7 provide that to her.

8 (Exhibit 9 was marked for identification  
9 by the Certified Court Reporter.)

10 THE SPECIAL MASTER: That's fine. And I'm  
11 noting for the record that this is subject to being  
12 provided an affidavit around the -- the affidavit  
13 needs to speak to the following, so we're clear:  
14 Authenticity, how he got it, who he got it from, when  
15 he got it, where he got it from, and I think that  
16 would provide sufficient background. That's first.

17 Bear with me here.

18 Second, I'm going to ask UMC IT -- I hate to  
19 put you guys on the spot, but you would theoretically  
20 be the ones responsible for this in some capacity, be  
21 it downstream or Susie -- what's her name -- Susie  
22 Kisner. Have you guys ever seen a document -- this  
23 document or -- on your intranet or otherwise?

24 MR. SCHAIBLEY: Prior to today, no.

25 THE SPECIAL MASTER: I might remind everybody

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1 here that if push comes to shove, we will be searching  
2 UMC's intranet ourselves for this document. So I'm  
3 just telling you.

4 Like, I just don't want there to be any  
5 confusion downstream that I didn't make it  
6 crystal-clear that saying -- okay.

7 So let me understand next: I want to ask  
8 each of you. So Mr. Lattin, have you ever seen this  
9 document? Please look at it closely. It's entered as  
10 Exhibit Number 9.

11 MR. TOSTRUD: Exhibit 9.

12 THE SPECIAL MASTER: If you want to take a  
13 second to look at it, feel free.

14 Off the record.

15 (OFF RECORD.)

16 THE SPECIAL MASTER: Back on the record.

17 MR. LATTIN: Prior to today, I don't remember  
18 seeing this before.

19 THE SPECIAL MASTER: Okay. For the record,  
20 Mr. Clark...

21 MR. CLARK: (Examined document.) I'm saying  
22 the same. If I had seen it, I don't remember seeing  
23 it.

24 THE SPECIAL MASTER: Okay.

25 MR. SCHAIBLEY: (Examined document.) Prior

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1 to today, no.

2 THE SPECIAL MASTER: Now, my -- I'm going to  
3 just -- bear with me. I know we hit an hour and a  
4 half.

5 But do you have any such similar policy that  
6 you have seen that looks or covers the same that you  
7 have received, or have --

8 MR. LATTIN: As far as backups, I have a  
9 policy --

10 THE SPECIAL MASTER: No. I'm talking  
11 about -- what's the title of that document?

12 MS. WITTY: This says, at the top under  
13 "Subject," "Record Retention and Disposal."

14 MR. LATTIN: No.

15 THE SPECIAL MASTER: Have you -- do you have  
16 anything around record retention or disposal within  
17 your purview?

18 MR. CLARK: No, not that I know of.

19 THE SPECIAL MASTER: Who would -- and then --

20 MR. SCHAIBLEY: No.

21 THE SPECIAL MASTER: I mean, somebody has got  
22 to be setting your record schedule somewhere for how  
23 long you are keeping stuff, and it's got to be in  
24 writing somewhere.

25 MR. GODINO: Or for any kind of legal hold.

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1           THE SPECIAL MASTER: We'll get into legal  
2 holds in a second. I just -- I just want to  
3 understand at a very basic level, when you get a  
4 litigation holder, you get a litigation destruction  
5 notice, or you get -- you don't keep data forever;  
6 right -- let's go off the record.

7                               (OFF RECORD.)

8           THE SPECIAL MASTER: I'm going to order UMC  
9 to find me somebody within the IT department that sets  
10 the record retention schedules for e-mails, for  
11 BlackBerry messaging, for the different documents that  
12 are being sought here in this case. I'm very  
13 confident that everybody here wants to get that done.

14                           I'm a bit mystified -- strike that.

15                           What I need from you guys is to find out what  
16 they are and who set them and what you are currently  
17 doing. Okay? Is that crystal-clear, Counsel for UMC?

18                           MS. WITTY: Yes.

19           THE SPECIAL MASTER: Now we will take a  
20 break, because I said we would take a break.

21                           With BlackBerry, I actually don't have any  
22 more questions until I get the additional data.

23                           Does Plaintiff have any more  
24 BlackBerry-specific questions? Until I know how they  
25 are configured, what you are syncing, and how you are

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1       doing it, I don't have any more particular questions.  
2       But you do understand the order I gave, which is  
3       preserve -- talk to counsel, get the list of  
4       custodians, and make sure they are being preserved  
5       now.

6               We'll touch on backup in a second.

7               Plaintiff, anything about BlackBerry?

8               MR. TOSTRUD: I just have a comment about  
9       BlackBerry that's very quick, and that is, it's been  
10      represented to us many times by counsel that e-mail  
11      messages which were being sent or received to or from  
12      a BlackBerry were absolutely going to the server.

13              THE SPECIAL MASTER: Okay. And we have  
14      clearly established in this hearing that they are  
15      going to go and verify that that is indeed what is  
16      happening. I'm sure counsel is not forthright-telling  
17      you what is wrong. It is clearly like -- their CIO of  
18      UMC clearly is not the person syncing the servers and  
19      sharing the information, because he just said he is  
20      going to go check, and he is the person responsible  
21      for knowing and making that happen. Okay?

22              Now we will take a break.

23              I do have one more BlackBerry-based question,  
24      which is I want to understand how new phones are put  
25      on and images are set and how the -- why they need to

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1 be wiped and if you make a copy. So it's a purview --  
2 I'm giving you a preview of what my next questions  
3 are.

4 Let's go off the record.

5 (RECESS TAKEN 10:46 A.M. TO 11:01 A.M.)

6 THE SPECIAL MASTER: Back on the record.

7 I have six questions for -- Mr. Clark, I have  
8 six questions for you. They pertain to the BlackBerry  
9 images that get pushed.

10 Are you with me?

11 MR. CLARK: Yes.

12 THE SPECIAL MASTER: Have you had a chance to  
13 read the custodian interview forms?

14 Can Counsel Witty show him any one of the  
15 custodian interview forms where what I'm talking about  
16 comes up.

17 MR. CLARK: Okay. So I'm seeing something  
18 about BlackBerry updates.

19 THE SPECIAL MASTER: Okay. According to my  
20 understanding, when you push a BlackBerry update, what  
21 happens?

22 MR. CLARK: Push a BlackBerry update?

23 THE SPECIAL MASTER: Right there, the  
24 BlackBerry -- what are you looking -- Counsel Witty,  
25 what did you give him? Which one?

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1 MS. WITTY: These are the ones that were  
2 provided to the special master in camera. It's  
3 regarding the updates and the dates for those updates.

4 Are you going to look specifically at --

5 THE SPECIAL MASTER: I just want one of them.  
6 Was Mr. Mumford in the one you provided? Let me look.

7 MS. WITTY: Are you talking about the  
8 updates?

9 THE SPECIAL MASTER: Yes, when the update  
10 wipes the prior -- oh, yes, here we go. I found one.  
11 Can you please point yourself to Mr. Espinoza's chain  
12 of custody. I'll bring it over.

13 MS. WITTY: The chain of custody?

14 THE SPECIAL MASTER: No, sorry. Custodial  
15 interview.

16 Here you go (indicating).

17 MR. CLARK: Okay.

18 MS. WITTY: Do you want this too  
19 (indicating)?

20 THE SPECIAL MASTER: Perfect. So my  
21 question -- so we're talking about the BlackBerry  
22 Curve 8530 on January 20th, 2011.

23 Do you see that?

24 MR. CLARK: Yes.

25 THE SPECIAL MASTER: Then it sends the 8530



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1 on September 22, 2008. Now, irrespective of his  
2 technical prowess and his understanding of how the  
3 BlackBerry syncs to the server, what I want to  
4 understand is, when you update the phone, do they get  
5 wiped? Does the BlackBerry device ever get wiped by  
6 you?

7 MR. CLARK: No.

8 THE SPECIAL MASTER: Who would ever wipe a  
9 BlackBerry device if it's not wiped by you?

10 MR. CLARK: PBX would handle the handhelds.

11 THE SPECIAL MASTER: So then when a new  
12 update comes out, and let's say a BlackBerry update to  
13 the OS happens, okay? So the BlackBerry OS updates.  
14 How -- when -- on multiple custodial interviews, the  
15 custodians say that their BlackBerries were updated  
16 and the data was wiped, right, Counsel Witty?

17 MS. WITTY: Correct.

18 THE SPECIAL MASTER: Explain to me how that  
19 happens or how that's possible, either one of those.

20 MR. CLARK: My understanding is that when --  
21 they get the handheld back to PBX and PBX wipes them  
22 and then they put the latest OS on them and then get  
23 them up on the BES. So they do the updates that way,  
24 they wipe it because --

25 THE SPECIAL MASTER: Do they -- so you

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1 wouldn't know if they backed them up or anything?

2 MR. CLARK: No.

3 THE SPECIAL MASTER: And it's at the physical  
4 device level?

5 MR. CLARK: I'm sorry?

6 THE SPECIAL MASTER: It's at the device  
7 level?

8 MR. CLARK: Yes.

9 THE SPECIAL MASTER: When they wipe it, does  
10 that remove the messages from the server?

11 MR. CLARK: It should not.

12 THE SPECIAL MASTER: I would think not,  
13 because it would re-sync.

14 MR. CLARK: That's right. Again, like I  
15 said, all the messages on the server -- on the  
16 Exchange server would sync to the BlackBerry handheld.

17 THE SPECIAL MASTER: And you are going to  
18 figure out how it actually syncs and what policies?

19 MR. CLARK: (Nodded head up and down.)

20 THE SPECIAL MASTER: So when they say it was  
21 wiped, it was a physical wipe done by the PBX team?

22 MR. CLARK: (Nodded head up and down.)

23 THE SPECIAL MASTER: I just want to  
24 understand, because we're going to get on the phone  
25 with her and I want to -- I want to understand when

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1       there is one in 2013 -- well, multiple wipes in 2013,  
2       I just want to make sure you weren't the person  
3       wiping.

4               Have you ever wiped a BlackBerry device?

5               MR. CLARK: I have wiped Blackberries.

6               THE SPECIAL MASTER: For UMC?

7               MR. CLARK: For myself at UMC.

8               THE SPECIAL MASTER: For UMC. Not for your  
9       personal -- I know you are in IT. I know that IT  
10      people do all sorts of things for their own. Has an  
11      UMC employee ever come to you and said, "Wipe my  
12      BlackBerry"?

13              MR. CLARK: I don't recall wiping a  
14      BlackBerry for UMC.

15              THE SPECIAL MASTER: Employee.

16              MR. CLARK: Yes.

17              THE SPECIAL MASTER: Okay. And to be clear,  
18      for any of these six people -- and can you please list  
19      the six people?

20              MS. WITTY: It would be Brian Brannman, John  
21      Espinoza, James Mumford, Doug Spring, Jackie Panzeri,  
22      or Claudette Myers.

23              THE SPECIAL MASTER: What about the -- who is  
24      the other admin?

25              MS. WITTY: You mean administrative

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1       assistant?

2               THE SPECIAL MASTER:   Yes.

3               MS. WITTY:   Cindy Dwyer.

4               THE SPECIAL MASTER:   Was there two or one?

5               MR. PIXLEY:   There were two.

6               THE SPECIAL MASTER:   Have any of those people  
7       ever come to you and said, "Wipe my BlackBerry"?

8               MR. CLARK:   No.

9               THE SPECIAL MASTER:   That's all I needed.

10       Thank you very much -- no, thank you.   That's what I  
11       needed to know.   Perfect.   Let's call her.

12               So would she be the person who would know, as  
13       far as you guys know?

14               MS. FOLEY:   Yes.

15               MR. CLARK:   Susie Kisner is the manager over  
16       Trina.   She's the PBX supervisor.   I believe Trina is  
17       the one who does the wiping of the handheld.

18               (Marilyn Susan Kisner now present via  
19       telephone.)

20               MS. WITTY:   You are on speakerphone here with  
21       counsel for UMC, counsel for plaintiffs, and the  
22       Special Master in the Small lawsuit.

23               The Special Master has some questions for you  
24       regarding PBX and the BlackBerry updates.

25               THE SPECIAL MASTER:   Okay.   So, hi, Susie,

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1       this is Special Master Garrie.

2               How are you?

3               MS. KISNER: I'm good. How are you?

4               THE SPECIAL MASTER: I'm all right. I'm  
5       inside, and it's sunny outside, but besides that,  
6       okay.

7               I want to make sure before we go forward, I  
8       want you to understand you are -- I'm speaking to you  
9       as an Officer of the Court. So anything you offer or  
10      you state is being recorded for the record, it's like  
11      testimony.

12              You understand that?

13              MS. KISNER: Yes, I do.

14              THE SPECIAL MASTER: Okay. For the record,  
15      what's your full name?

16              MS. KISNER: Marilyn Susan Kisner.

17              THE SPECIAL MASTER: Okay. And just for the  
18      record, what is your job title at UMC?

19              MS. KISNER: IT customer support manager.

20              THE SPECIAL MASTER: Okay. And within that,  
21      are you responsible for PBX systems within UMC?

22              MS. KISNER: Yes, I am.

23              THE SPECIAL MASTER: Does that also include  
24      supporting the handheld BlackBerry devices themselves?

25              MS. KISNER: Yes, it does.

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1 THE SPECIAL MASTER: Does it -- are you aware  
2 of this ongoing litigation?

3 MS. KISNER: I am.

4 THE SPECIAL MASTER: When were you made aware  
5 of it?

6 MS. KISNER: The first discussion I had was  
7 probably last week.

8 THE SPECIAL MASTER: Okay. Has anybody at  
9 UMC told you to preserve the mobile devices before  
10 last week?

11 MS. KISNER: I'm trying to remember when. We  
12 were told to have them available for three people, I  
13 believe, and I want to say maybe a month and a half,  
14 two months ago.

15 THE SPECIAL MASTER: Okay. Do you have a  
16 list of every individual that has a smartphone within  
17 UMC that you support?

18 MS. KISNER: I'm sorry. Say that again?

19 THE SPECIAL MASTER: Do you have a list of  
20 every smartphone that you support within UMC?

21 MS. KISNER: Yes, I do.

22 THE SPECIAL MASTER: Can you please provide  
23 that to Counsel Witty for UMC?

24 MS. KISNER: Okay.

25 THE SPECIAL MASTER: By end of day today?

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1 MS. KISNER: Yes.

2 THE SPECIAL MASTER: Now, I want to  
3 understand, when a user -- and have -- did you ever  
4 receive a litigation hold or preservation notice from  
5 anybody at UMC?

6 MS. KISNER: I don't believe I have, but  
7 possibly it came in to someone who works for me.  
8 That's possible. I don't know.

9 THE SPECIAL MASTER: Okay. Please check  
10 within the people that work for you as well and please  
11 read it yourself.

12 Counsel, please send her a copy, so she has  
13 it.

14 Within the scope of your duties and  
15 responsibilities, if a user -- there has been updates  
16 to BlackBerry devices. Are you responsible for those  
17 updates?

18 MS. KISNER: Yes.

19 THE SPECIAL MASTER: Okay. When you update a  
20 device, do you back it up before you update it?

21 MS. KISNER: No.

22 THE SPECIAL MASTER: When you update a  
23 device, you do not back it up?

24 MS. KISNER: No, I don't believe we have  
25 backed up any mobile devices to date.

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1           THE SPECIAL MASTER: So if you lose a CEO,  
2           you update the CEO's BlackBerry device -- I want to  
3           understand -- it's just gone, and too bad for him?

4           MS. KISNER: We don't back them up. We never  
5           have.

6           THE SPECIAL MASTER: Okay. So when they  
7           bring you a phone and they ask you to update it, what  
8           do you do?

9           MS. KISNER: We do the update on it.

10          THE SPECIAL MASTER: I need you to walk me --  
11          I'm a technical person. I need you to walk me through  
12          in a little more detail than "we do the update." I  
13          need you to walk me through the steps. I bring you  
14          the phone, and what do you do?

15          MS. KISNER: I don't have one in front of me.  
16          I would follow the -- I'd go into "Settings" and --

17          THE REPORTER: I can't hear.

18          THE SPECIAL MASTER: Sorry, can you speak  
19          slower?

20          MS. KISNER: -- "Security Updates," and then  
21          I would --

22          THE SPECIAL MASTER: No, no. Sorry, Susie,  
23          just for the court reporter, can you repeat yourself  
24          again.

25          MS. KISNER: I would go into the "Settings"



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1 on the device and then to "Security Updates," and I  
2 would apply them.

3 THE SPECIAL MASTER: And what if that would  
4 wipe -- and were you aware or have knowledge that  
5 could result in the deletion of the data or messages  
6 on the device?

7 MS. KISNER: If it did, it did. We do not  
8 back them up and we --

9 THE SPECIAL MASTER: No, no. I asked are you  
10 aware that that happened.

11 MS. KISNER: It hasn't happened to date that  
12 I know of. I don't know.

13 THE SPECIAL MASTER: No. Are you aware that  
14 when you update a BlackBerry device, that it could,  
15 depending on how you configure the update, wipe  
16 everything that's on the phone?

17 MS. KISNER: Yes, it could.

18 THE SPECIAL MASTER: So you are aware?

19 MS. KISNER: Yes, it could.

20 THE SPECIAL MASTER: So yes, you -- meaning  
21 "yes," you know, or "yes," you --

22 MS. KISNER: Yes.

23 THE SPECIAL MASTER: -- what I just told you  
24 you heard?

25 MS. KISNER: What you just told me I heard,

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1 and I am aware that it could.

2 THE SPECIAL MASTER: Okay. That's all.

3 Okay. Sorry for the confusion.

4 Have you been provided a list of all of the  
5 devices that if someone -- of custodians that, if they  
6 do bring you a device, that you are to make a backup  
7 copy before updating them?

8 MS. KISNER: Well, I am aware that we are  
9 keeping a box of devices that we have pulled back  
10 because we don't want to do any kind of factory  
11 default wipe on them.

12 THE SPECIAL MASTER: I'm going to make it  
13 easy for you. I'm going to order you to do the  
14 following:

15 Counsel, can you please provide her a list of  
16 the individual custodians that are of interest to us  
17 in this litigation, with the explicit instructions  
18 that if she is brought any said device to be wiped,  
19 that she is to not wipe them until a copy has been  
20 made, a forensic copy has been created with MD5 hash  
21 values verified by whatever forensic expert you want,  
22 and that said copy has been verified and validated.

23 And then if she -- I would recommend against  
24 wiping of it because of the potential downstream, but  
25 at the very least, I would like to be notified of

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1 this, if she does decide to wipe them.

2 Just so I understand, do you have access to  
3 the BlackBerry server itself?

4 MS. KISNER: I do.

5 THE SPECIAL MASTER: Okay. Do you have  
6 administrative control or access?

7 MS. KISNER: I believe I do.

8 THE SPECIAL MASTER: Do you use this --

9 MS. KISNER: -- utilize it, but I believe I  
10 have access.

11 THE SPECIAL MASTER: Have you ever used this  
12 access or control?

13 MS. KISNER: I have in the past; not the past  
14 probably two years.

15 THE SPECIAL MASTER: Okay. But in the past  
16 four years, you have?

17 MS. KISNER: I have.

18 THE SPECIAL MASTER: And what have you used  
19 your access to do during that time period?

20 MS. KISNER: Add users.

21 THE SPECIAL MASTER: When you add a user, can  
22 you please explain to me in a little more detail, what  
23 are you adding them to?

24 MS. KISNER: The BlackBerry server.

25 THE SPECIAL MASTER: Does that include the

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1       messaging?

2               MS. KISNER: Yes, or -- so they would -- so  
3       they would get their e-mails via that device.

4               THE SPECIAL MASTER: They have the ability to  
5       get their e-mail without that device using the IMAP  
6       SMTP settings anyway, if they add their password to  
7       their e-mail account.

8               Is that not correct?

9               MS. KISNER: It's not, according to our  
10       policy.

11              THE SPECIAL MASTER: I know. I'm not asking  
12       you according to your policy.

13              MS. KISNER: Yes.

14              THE SPECIAL MASTER: I asked you, if I have  
15       an iPhone, and I know your IMAP server, and I know the  
16       ports to connect to, and I have a password, and I went  
17       on Google, and I typed in "how do I configure my  
18       iPhone to check my e-mail," and I had my own log-in  
19       and password, I would be able to do that?

20              MS. KISNER: On a smartphone through  
21       ActiveSync, that --

22              THE SPECIAL MASTER: Not through ActiveSync.  
23       I said through any phone, smartphone. I'm going to  
24       say the answer is yes, considering your Exchange  
25       administrator is sitting here and had just in the

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1 prior hearing told me the IMAP configuration did allow  
2 for that with a password, unless you believe  
3 differently.

4 MS. KISNER: Okay. I would agree that he  
5 would be the --

6 THE SPECIAL MASTER: I'm glad you agree. He  
7 knows what he's talking about. Through the entire  
8 hearing he's established that he's --

9 MS. KISNER: Yes, I would agree he knows what  
10 he's talking about.

11 THE SPECIAL MASTER: -- he's established that  
12 he's technically competent and speaks well to UMC's  
13 ability to manage the Exchange environment.

14 Just so I understand, for my own edification  
15 here, up until -- has it always been your standard  
16 policy -- do you have any policies or practices that  
17 are in writing around to how to manage BlackBerry or  
18 mobile devices?

19 MS. KISNER: We have a mobile device policy.

20 THE SPECIAL MASTER: Does that include record  
21 retention and record schedule?

22 MS. KISNER: No, it does not.

23 THE SPECIAL MASTER: Okay. Can you please  
24 provide that policy to counsel for UMC?

25 MS. KISNER: I believe I sent that to Cayla

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1 last week.

2 MS. WITTY: Should be in what was provided  
3 today.

4 THE SPECIAL MASTER: Okay. And do you follow  
5 that policy?

6 MS. KISNER: Yes, we do.

7 THE SPECIAL MASTER: Okay. And just so I  
8 understand, can I see that policy, Counsel Witty? I  
9 didn't see mobile devices covered in it. I don't mean  
10 to say they're not. I just...

11 MS. WITTY: It's at "Communication Systems."  
12 There's a "Loss of Communication Systems," and there's  
13 a --

14 THE SPECIAL MASTER: Oh, here it is.  
15 "Communication Failure." Is that what you're  
16 referring to?

17 MS. WITTY: There was a "Loss of  
18 Communication Systems" and a "Communication" --

19 THE SPECIAL MASTER: Oh, yes. There we go,  
20 "Loss of Communication" -- okay.

21 I understand for loss of communications. I'm  
22 talking about the support and maintenance and  
23 preservation.

24 So a new employee joins --

25 MS. KISNER: It is "Appropriate Mobile

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1 Device/Smart Phone Use."

2 THE SPECIAL MASTER: Okay. The title is  
3 "Loss of Communication System." Am I looking at the  
4 right document?

5 MS. KISNER: Not for mobile device. Are you  
6 still looking for the mobile device policy?

7 THE SPECIAL MASTER: Yes.

8 MS. KISNER: It is I-207.2, "Appropriate  
9 Mobile Device/Smart Phone."

10 THE SPECIAL MASTER: I have "Appropriate  
11 Internet Use." I don't have the policy you are  
12 referring to.

13 Can you repeat yourself again, the number?

14 MS. KISNER: I'm sorry?

15 THE SPECIAL MASTER: Can you please repeat  
16 the name of that -- number of the policy?

17 MS. KISNER: It is I-207.2.

18 THE SPECIAL MASTER: Okay. One more time.

19 MS. KISNER: I-207.2, "Appropriate Mobile  
20 Device/Smart Phone Use."

21 THE SPECIAL MASTER: Okay. I'll have to look  
22 that over, because I haven't seen it. One second.  
23 Thank you.

24 (There was a pause in the proceedings.)

25 THE SPECIAL MASTER: This policy doesn't

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1 speak to the wiping and support of these. Do you have  
2 a policy around the wiping and support of mobile  
3 devices?

4 Nowhere in this policy, as I've read it, does  
5 it talk about when you will be wiping, updating, or  
6 etc., to the mobile devices. Do you have any policy  
7 that states how or what --

8 MS. KISNER: I don't believe there is a  
9 policy.

10 THE SPECIAL MASTER: So -- that's fine. It's  
11 not -- it's okay if there is not. I'm just trying to  
12 understand.

13 So then I get this -- you -- they -- I'm just  
14 trying to understand how it works, because my focus  
15 and what I've been tasked with is to make sure that we  
16 have all of the right mobile devices relating to the  
17 custodians preserved.

18 You'll get a list, so we've got that covered.  
19 I'm just trying to understand.

20 So I have context. An executive will come to  
21 you, and they will say, "I've lost my phone."

22 If they have lost their phone, what do you  
23 do?

24 MS. KISNER: We do an over-the-air wipe from  
25 the BlackBerry server.



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1 THE SPECIAL MASTER: Do you log that?

2 MS. KISNER: I'm sorry?

3 THE SPECIAL MASTER: Do you log when you do  
4 this?

5 MS. KISNER: I haven't done that, but I would  
6 assume that, yes, that it would be logged. There is a  
7 security report that they have to do for losing that  
8 device and, of which, at that point when we receive  
9 that, we would do -- if we couldn't wipe it over the  
10 air, then we would call Sprint and have them do an  
11 over-the-air wipe of the device.

12 THE SPECIAL MASTER: You would call who? I'm  
13 sorry.

14 MS. KISNER: Sprint.

15 THE SPECIAL MASTER: What's --

16 MS. KISNER: Sprint is our cellular carrier.

17 THE SPECIAL MASTER: Oh, Sprint. Sorry.

18 Did users connect their device to their  
19 lap -- to their computers to sync their --

20 MS. KISNER: No.

21 THE SPECIAL MASTER: How did they sync their  
22 calendars?

23 MS. KISNER: They sync them over the air  
24 through the BlackBerry server. They are not allowed  
25 to connect it to their computer. We don't allow

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1 people to connect anything into their USB devices.  
2 That sends this to security. And you can speak with  
3 them, Dean, regarding that, but I believe that they  
4 receive a notification when somebody tries to plug  
5 something into their USB port.

6 THE SPECIAL MASTER: Yes, that's passive  
7 versus active. The question that we're working, and  
8 I'm going to get further answers to, is if there is a  
9 log -- in the transcript from Friday -- but I'm  
10 expecting a log of the USB device's connectivity  
11 association with each of the six custodians, for my  
12 own edification.

13 But we will -- so I'm -- or like, if we  
14 covered that on Friday, this is nothing to do with  
15 you. Excuse me one second.

16 I am ordering you to provide me as special  
17 master a list of USB device connectivity given the  
18 issue with the mobile devices that we have had to date  
19 for the custodians because there is no backups of any  
20 of the wipes that were done internally by your  
21 department. That's correct; right?

22 MS. KISNER: Yes.

23 THE SPECIAL MASTER: That kind of clears up  
24 wiping.

25 So I mean, when they say they do an "update,"

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1       just so I get it, I need an update. I bring you my  
2       phone, and I say, "I need you to update my BlackBerry  
3       operating system."

4               You would not back up their device. You  
5       would just simply wipe their device and put the new  
6       update on?

7               MS. KISNER: Correct. And then they would --  
8       that's correct. And then as it completes, then it  
9       would just reload their calendar and their e-mail  
10      account.

11              THE SPECIAL MASTER: It would sync somehow  
12      between all of -- which we've --

13              MS. KISNER: It does sync; correct.

14              THE SPECIAL MASTER: And are you aware of the  
15      sync? Do you know what the policy --

16              One second and we'll get to your question --  
17      or do you have a question?

18              MR. FORREST: Well, I was just wondering if  
19      she recorded whenever she did such an update or what.

20              THE SPECIAL MASTER: So do you have any  
21      record or log of any wiping that you have done?

22              MS. KISNER: No, I don't believe we do.

23              THE SPECIAL MASTER: Who's -- are you  
24      responsible for doing this?

25              MS. KISNER: For wiping the devices? Yes.

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1 It's part of a process or a procedure.

2 THE SPECIAL MASTER: Well, I mean, luckily  
3 Sprint -- lucky for us, Sprint tracks all of that in  
4 detail. So if you don't have it, we can go to the  
5 third party and get it.

6 MS. KISNER: Okay.

7 THE SPECIAL MASTER: Are you sure you don't  
8 have it?

9 MS. KISNER: I don't believe we have it, no.

10 THE SPECIAL MASTER: Can you check?

11 MS. KISNER: I can check, but I'm pretty sure  
12 we don't have it. You want us to go back to our  
13 carrier?

14 THE SPECIAL MASTER: Yes.

15 MS. KISNER: Okay. We can do that.

16 THE SPECIAL MASTER: Okay. Just so -- who  
17 sets the policies here for how long e-mails are  
18 allowed to sit on the BlackBerries?

19 MS. KISNER: I have never set any policy. I  
20 think it's on -- it may be from the BlackBerry server.

21 THE SPECIAL MASTER: Well, I can promise you  
22 that he's not setting the policies, because he's  
23 sitting here and I asked him who's setting the  
24 policies.

25 MS. KISNER: Then I don't know.

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1 THE SPECIAL MASTER: Let's go off record for  
2 one second.

3 (OFF RECORD.)

4 (Marilyn Susan Kisner no longer present  
5 telephonically.)

6 THE SPECIAL MASTER: Let's go back on the  
7 record.

8 I'm going to order UMC's counsel to figure  
9 out with UMC's IT department and operational  
10 executives who the individuals are that set the  
11 policies that are then either been configured -- well,  
12 we've established at least since June of 2012.

13 And how long have you been responsible for  
14 the BlackBerry server?

15 MR. CLARK: Since its implementation, back  
16 in, I don't remember what year, but it's been quite a  
17 while ago.

18 THE SPECIAL MASTER: 2010?

19 MR. CLARK: Probably around there or earlier.

20 THE SPECIAL MASTER: For sure 2010.

21 Well, whoever -- I mean, yes, 2010? 2011?

22 MR. CLARK: I think 2010.

23 THE SPECIAL MASTER: Let's be safe. 2011?

24 MR. CLARK: Yes.

25 THE SPECIAL MASTER: Okay. So someone told

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1       you what the policies are or set the policies before  
2       you took control of it. I need to know what those  
3       policies were that were set, because the alternative  
4       that remains is that I can have some third-party  
5       expert come on-site and get me all of my answers, and  
6       I'd like to avoid --

7               MS. FOLEY: We understand, and we'll endeavor  
8       to do that.

9               THE SPECIAL MASTER: Yes. I'd like to avoid  
10       costing you hundreds of thousands of dollars, which is  
11       what it will cost to have someone to come in and learn  
12       your entire IT infrastructure simply to get me these  
13       answers. All right. That is not my desire.

14              My desire is to get through this as quickly  
15       and cost effectively as possible, but we need to know  
16       the very basics; right?

17              With regards to the mobile devices, I don't  
18       think there is a lot more to be said. I know that you  
19       guys told -- I know at least I told the CIO at our  
20       very first hearing that there was an expectation for  
21       preservation, and I know that was more than two weeks  
22       ago.

23              So I'm a little surprised and shocked that he  
24       failed to tell the person that's responsible for  
25       wiping them and give her a list.

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1                   Now, why he didn't bother to do that, even  
2                   though I ordered him and the judge ordered him to make  
3                   sure that that was the case. I am going to repeat the  
4                   order.

5                   For purposes of clarity and succinctity, I'm  
6                   ordering UMC to provide a list of custodians and their  
7                   devices to the people within UMC's organization  
8                   responsible for wiping and to have them cease such  
9                   behavior. And if they do want to wipe, create a  
10                  forensic image with MD5 hash values, and I would  
11                  advise against doing it, but at the very least, make a  
12                  bit-level forensic copy, as I earlier stated.

13                  Okay. Does plaintiffs have anything  
14                  substantive they want to add?

15                  Okay. Perfect.

16                  Now, we have covered the BlackBerry  
17                  environment, I think, for the most part. So basically  
18                  when they said "updating," what they really were doing  
19                  is they were taking the phones in to the head of  
20                  customer service, saying, "I need my" -- she gives  
21                  them the phone, and she basically just wiped  
22                  everything off their phone, didn't make a copy, and on  
23                  the merry way she went.

24                  I just -- that's as I understand it. I mean,  
25                  you guys all heard the same thing I heard. Is there

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1 anything that you have that I didn't hear that you  
2 were involved with -- were you ever involved in this  
3 process?

4 MR. SCHAIBLEY: No.

5 THE SPECIAL MASTER: Were you ever involved  
6 in this process, the wiping?

7 MR. CLARK: Wiping, no. I'm --

8 THE SPECIAL MASTER: That she just described  
9 to me with the PBX, I come, she -- they get a phone,  
10 they wipe it. Were you ever involved in that process?

11 MR. CLARK: No. I did my own --

12 THE SPECIAL MASTER: No, no. I wipe my  
13 phones every three months and religiously dispose of  
14 them every night. So I do -- I get personal. I'm  
15 talking about for any of the six individuals which you  
16 already said "no" to.

17 MR. CLARK: No, I did not wipe any of those  
18 individuals.

19 THE SPECIAL MASTER: And you, sir?

20 MR. LATTIN: No.

21 THE SPECIAL MASTER: Okay. Without any  
22 further ado, let's switch to backup because there's  
23 nothing like talking about with regards to mobile.  
24 But I do want that order, and I want the CIO to sign  
25 receipt of this order and that it has been done.



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1       Okay? Because I just got off the phone with this lady  
2       and she was like, "I heard about a week ago," and she  
3       still doesn't have a list of the people.

4               And please provide a copy to her of the  
5       preservation letter notice so she has one.

6               Okay. Backup. Let's start at the beginning  
7       of the backup.

8               How long have you been there?

9               MR. LATTIN: I've been doing the network side  
10       which includes the backup since December 2008.

11               THE SPECIAL MASTER: Okay. When we say  
12       "backup," let's be clear. We're talking server  
13       backups, computer backups, or all backups?

14               MR. LATTIN: The workstations themselves, we  
15       don't back up. It'll be just servers.

16               THE SPECIAL MASTER: So if there is backup  
17       done, are you the go-to person?

18               MR. LATTIN: Normally, yes.

19               THE SPECIAL MASTER: Normally?

20               MR. LATTIN: There is one other network  
21       individual that could do it, but it's normally me.

22               THE SPECIAL MASTER: Would you oversee -- do  
23       you write -- let me try this differently.

24               What backup systems do you use?

25               MR. LATTIN: Currently we are using

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1 CommVault.

2 THE SPECIAL MASTER: Which version? 10?

3 MR. LATTIN: Version 10.

4 THE SPECIAL MASTER: What pack? I'm just  
5 kidding.

6 MR. LATTIN: I can tell you.

7 THE SPECIAL MASTER: So you are running  
8 CommVault. You are upgrading, I heard, to Simpana or  
9 some archiving that you're rolling out.

10 MR. LATTIN: Yes. They're looking at the  
11 archiving feature.

12 THE SPECIAL MASTER: But if I needed a backup  
13 done, be it of a local computer, of a mobile device,  
14 or a network file server, you are my go-to person?

15 MR. LATTIN: Correct.

16 THE SPECIAL MASTER: Okay. We're going to  
17 start at the very beginning and get all the way to the  
18 end.

19 Let's first take care of the mobile phones,  
20 because this is clearly the one -- they would  
21 over-the-air wipe them, and they would never get  
22 connected to outside of the BlackBerry server, as far  
23 as I can tell. But we're going to get a log. There  
24 is a chance that maybe the users didn't follow IT  
25 policy, and they connected their phones and may

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1 actually have a copy there.

2 Otherwise, the only place we have a copy is  
3 sitting on the BlackBerry server, unless I'm missing  
4 something. Is that incorrect? From either the  
5 Exchange -- anybody --

6 MR. SCHAIBLEY: That sounds correct, yes.

7 THE SPECIAL MASTER: And Mr. Clark, is that  
8 correct? You want me to repeat the question?

9 MR. CLARK: Yes, please.

10 THE SPECIAL MASTER: Can you read the  
11 question back, please?

12 THE REPORTER: It might take a minute. Hang  
13 on.

14 THE SPECIAL MASTER: I'll just repeat it:

15 My question again is, as I understand it,  
16 based on the conversation I just had with Stephanie  
17 and the conversations I've had with you, with  
18 everybody from UMC, the group, the BlackBerry  
19 environment today, when somebody wipes their phone,  
20 when that wipe happens, the only place any information  
21 could actually sit for that phone today would be on  
22 the BlackBerry server environment or the Exchange  
23 mailbox?

24 MR. CLARK: That's correct. Or through  
25 possibly --

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1 THE SPECIAL MASTER: And that's it?

2 MR. CLARK: Yes.

3 THE SPECIAL MASTER: You are responsible for  
4 the BlackBerry server backups?

5 MR. LATTIN: Yes.

6 THE SPECIAL MASTER: And then a SQL  
7 clustering as well?

8 MR. LATTIN: Correct.

9 THE SPECIAL MASTER: How does the backup  
10 happen?

11 MR. LATTIN: Normally, we have -- let's just  
12 start -- describe the policy.

13 THE SPECIAL MASTER: Yes, the policy as  
14 implemented.

15 MR. LATTIN: We do a full backup every Friday  
16 evening, and then Sunday through Thursday we do an  
17 incremental, so all the changes on the servers are  
18 during those days.

19 As far as the BES server, I believe that was  
20 on the virtual environment, Jason, or it is on the  
21 virtual environment?

22 MR. CLARK: All BlackBerries have been  
23 virtual since day one.

24 MR. LATTIN: So in CommVault, you have --  
25 retention for at least the data backup retention goes

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1 by cycles and days. So on that --

2 THE SPECIAL MASTER: Do you pull tapes?

3 MR. LATTIN: Not currently, no. We're all  
4 spinning discs, all magnetic media. It's hard drives,  
5 sorry. Backing up to hard drives, not tapes.

6 THE SPECIAL MASTER: You've always backed up  
7 to hard drives?

8 MR. LATTIN: Since I've been there, yes.  
9 They had a tape drive when I first started, but it was  
10 out of date and we weren't able to use it anymore, so  
11 we just moved to --

12 THE SPECIAL MASTER: I need a date. When did  
13 you start? Sorry.

14 MR. LATTIN: December 5th, 2008.

15 THE SPECIAL MASTER: Okay. So during the  
16 relevant time period, they were writing to disc?

17 MR. LATTIN: Correct.

18 THE SPECIAL MASTER: Did they backup the  
19 discs?

20 MR. LATTIN: No. That's just the one --

21 THE SPECIAL MASTER: Do you DR the discs?

22 MR. LATTIN: We have -- the only policy we  
23 have right now is data that resides in our on-site  
24 data center gets backed up to the colo area. We have  
25 two separate backup systems. Anything residing

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1 primarily at the colo gets backed up in the data  
2 center side.

3 THE SPECIAL MASTER: Okay. So walk me  
4 through. Daily, weekly, monthly.

5 MR. LATTIN: Most of the servers, as far as  
6 Windows, go --

7 THE SPECIAL MASTER: We're talking about  
8 BlackBerry.

9 MR. LATTIN: I'm sorry, the --

10 THE SPECIAL MASTER: We'll get to all the  
11 other servers in a little bit. The BES server for --

12 MR. LATTIN: Sure. BlackBerry, if it lived  
13 on the virtual -- or if it lives on the virtual  
14 environment, it would be backed up the Friday and then  
15 incrementals during the week. And the default  
16 retention policy for that one is 28 days and three  
17 cycles. And a "cycle" is defined as the time between  
18 a full backup, so it would be three Fridays minimum.

19 THE SPECIAL MASTER: So you only have going  
20 back 28 days?

21 MR. LATTIN: Correct.

22 THE SPECIAL MASTER: For HIPAA you only have  
23 it going back 28 days?

24 MR. LATTIN: That's -- yes. That was the  
25 only policy we have towards the -- for data retention.

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1 THE SPECIAL MASTER: Let's go off the record.

2 (OFF RECORD.)

3 THE SPECIAL MASTER: Let's go back on the  
4 record.

5 It's not within the purview of my --

6 MR. LATTIN: Yes.

7 THE SPECIAL MASTER: Okay. So then we  
8 basically have no records of anybody's BlackBerry or  
9 anything going past 28 days?

10 MR. LATTIN: If it's been removed off the  
11 server; that's correct.

12 THE SPECIAL MASTER: I'm assuming everything  
13 I'm talking to you about has been removed off the  
14 server, and I'm looking at the backup discs because  
15 that's the only place the information exists in the  
16 whole wide world.

17 MR. LATTIN: Right.

18 THE SPECIAL MASTER: Do you never do an  
19 annual backup, no -- no annual snapshots?

20 MR. LATTIN: No. There's certain servers we  
21 have like one yearly backup, but that wouldn't be one  
22 of them.

23 THE SPECIAL MASTER: Would Exchange be one of  
24 those?

25 MR. LATTIN: Exchange has a little bit longer

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1 retention policy --

2 THE SPECIAL MASTER: No, no, I got -- we'll  
3 get --

4 MR. LATTIN: Oh, no, not for --

5 THE SPECIAL MASTER: This is the annual  
6 backup; right?

7 MR. LATTIN: No.

8 THE SPECIAL MASTER: It's not with the  
9 Exchange either?

10 MR. LATTIN: No, we don't have. So I  
11 misunderstood the question originally when you -- so  
12 just like do a yearly one and keep that for a certain  
13 amount of time?

14 THE SPECIAL MASTER: Right. Well, like every  
15 year you make a backup snapshot of your entire  
16 environment?

17 MR. LATTIN: No, we don't have that.

18 THE SPECIAL MASTER: Like January 2nd, you  
19 say, "Okay, we want a snapshot of January for what  
20 happened prior year" or December. Usually you do  
21 December 31st just to cover --

22 MR. LATTIN: Okay.

23 THE SPECIAL MASTER: -- and you keep that  
24 snapshot for a full year. Some people keep it for a  
25 total of seven years, depending on the records that



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1 are required.

2 MR. LATTIN: Yes, we don't have any policy  
3 implemented to do that.

4 THE SPECIAL MASTER: So I get this.

5 Okay. And do you receive litigation hold  
6 notices?

7 MR. LATTIN: No.

8 THE SPECIAL MASTER: Can you provide him a  
9 copy of the litigation hold notice, and the  
10 custodians?

11 MR. LATTIN: (Nodded head up and down.)

12 THE SPECIAL MASTER: So there is no way to  
13 get data that's 30 days old, basically, from the BES  
14 server?

15 MR. LATTIN: Not for that, no.

16 THE SPECIAL MASTER: From the BES server,  
17 there's no way to get data that's 30 days old?

18 MR. LATTIN: No, not for that.

19 THE SPECIAL MASTER: Okay. We're done with  
20 the Blackberries and moving forward, unless you guys  
21 have any further questions about the BlackBerry  
22 backup.

23 All right. Let's go to e-mail.

24 Moving forward, do we have time? We're good?  
25 Give me 10-minute notice, that way I can -- 10-minute

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1 warning.

2 Okay. Moving on to -- actually, before we  
3 get to e-mail, let's talk about users. I'm a senior  
4 executive hanging out at my house. I'm told that  
5 there is nothing at my house that would be on my  
6 computer, like if it's -- I don't have a work laptop  
7 or whatever. I only have desktops.

8 Do you guys back up any laptops?

9 MR. LATTIN: No.

10 THE SPECIAL MASTER: How does it work for an  
11 individual at a desktop sitting at some -- I'm sitting  
12 in my office. Pretend this is my office. I'm hanging  
13 out, and I finish writing this huge treatise on Syrian  
14 conflict, and I wrote it, and I'm really proud of  
15 myself. I go home, and then, for whatever reason, it  
16 goes bye-bye, gone. How does the backup work from my  
17 end?

18 And I didn't save it to my home drive. Yes,  
19 I saved it to my C drive. I saved it to  
20 C:/DanielSyrianpolicies/version011.docx.

21 MR. LATTIN: Yes, Unfortunately, if it wasn't  
22 saved to the home drive on the file server, we  
23 wouldn't have a backup.

24 THE SPECIAL MASTER: So you don't back up  
25 anything from the local computer?

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1 MR. LATTIN: There are probably four or five  
2 select, like, workstations that we have backed up, I  
3 had used for just testing, my personal one --

4 THE SPECIAL MASTER: Testing is different. I  
5 get the fact that you've got to test to make sure the  
6 backup works. I'm talking about -- okay. Let's list  
7 the six custodians. Let's just make sure. Can you  
8 list them again, the chosen ones?

9 MS. WITTY: Brian Brannman, John Espinoza,  
10 Doug Spring, Jackie Panzeri, James Mumford, Claudette  
11 Myers, and Cindy Dwyer.

12 MR. LATTIN: And none of those would be would  
13 backed up.

14 THE SPECIAL MASTER: Okay. So if I save  
15 something to my local drive, but now I learned on  
16 Friday that's not -- at the time period in question,  
17 it wasn't encouraged. As of today, is it not  
18 possible?

19 MR. SCHAIBLEY: It will be not possible as  
20 the computers are upgraded to Windows 7.

21 THE SPECIAL MASTER: Let's go off the record.

22 (OFF RECORD.)

23 THE SPECIAL MASTER: Back on the record.

24 So today, so I get it, a user has the ability  
25 to save documents to anywhere they want on their local

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1 desktop if they so desire, if they haven't been  
2 upgraded?

3 MR. SCHAIBLEY: I wouldn't say anywhere they  
4 wanted.

5 THE SPECIAL MASTER: Well, outside of the  
6 Windows administration folders, they could save it to  
7 their local drive.

8 MR. SCHAIBLEY: They could save it locally to  
9 the desktop or to the -- under their profile; correct.

10 THE SPECIAL MASTER: Or not even under their  
11 profile, could they save it to the --

12 MR. SCHAIBLEY: Yes.

13 THE SPECIAL MASTER: Okay. So it is possible  
14 for them to save it to their local C drive anywhere  
15 they want, as long as it's not within the Windows  
16 administration folders and other folders that you  
17 prevented them from accessing?

18 MR. SCHAIBLEY: Yes.

19 THE SPECIAL MASTER: Okay. But you don't  
20 back that up anyways?

21 MR. SCHAIBLEY: No.

22 THE SPECIAL MASTER: Just making sure I get  
23 it. All right.

24 But you do have a network file share. Each  
25 user, now, so I get this, they get a -- they have a

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1 user profile. You use an Active Directory; right?

2 MR. SCHAIBLEY: Yes.

3 THE SPECIAL MASTER: So you have an Active  
4 Directory system?

5 MR. SCHAIBLEY: Yes.

6 THE SPECIAL MASTER: Now I have a question,  
7 and then I'll -- if you have a question.

8 With the Active Directory profile, it  
9 specifies that every user has their own personal  
10 drive; right, I'm assuming?

11 MR. LATTIN: Yes.

12 THE SPECIAL MASTER: And that gets backed up?

13 MR. LATTIN: Yes.

14 THE SPECIAL MASTER: How does that backup  
15 work?

16 MR. LATTIN: As far as the -- all their files  
17 on the file server?

18 THE SPECIAL MASTER: Well, whatever, yes.

19 MR. LATTIN: Yes, the Active Directory, they  
20 will be redirected to the file server for their  
21 personal My Documents, then that's under the same type  
22 of schedule, on Fridays.

23 THE SPECIAL MASTER: 30 days is all you've  
24 got?

25 MR. LATTIN: I believe that one is four

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1 months.

2 THE SPECIAL MASTER: Yes, I think -- on the  
3 documents provided to me, it was.

4 But you have no annual or semiannual backup?

5 MR. LATTIN: Correct.

6 THE SPECIAL MASTER: You basically have no  
7 data going back more than 12 months?

8 MR. LATTIN: That's correct.

9 THE SPECIAL MASTER: Unless it's on their  
10 local computer?

11 MR. LATTIN: Yes.

12 THE SPECIAL MASTER: How does preservation  
13 work, then? Well, you answered that question.

14 I have a -- I don't get how UMC -- I guess  
15 once the script is run, you assume you have it all and  
16 you have a copy, I guess.

17 MS. FOLEY: Do you leave it sitting on the  
18 server for a long time, or no? It's on the server?

19 MR. LATTIN: Yes, that, I wouldn't know.  
20 That's all handled by --

21 MR. SCHAIBLEY: Are you referring to, like,  
22 the data collection we did?

23 THE SPECIAL MASTER: The data collection you  
24 moved to a secure server that only IT security has  
25 access to.

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1 MR. SCHAIBLEY: Correct.

2 THE SPECIAL MASTER: But if I didn't do a  
3 network file share collection, right, of the network  
4 file profile -- if I didn't collect, I'm part of the  
5 payroll group, and your script didn't collect the  
6 payroll group file shares?

7 MR. SCHAIBLEY: They did not.

8 THE SPECIAL MASTER: All right. But just as  
9 an example, right, I don't know who the network -- oh,  
10 that's one thing.

11 UMC, I'm going to -- Counsel, you --

12 And we'll get to yours in a second.

13 I need you to go and find out what network  
14 file shares are relevant and responsive.

15 MS. WITTY: We're already working on that.

16 THE SPECIAL MASTER: Okay. Good.

17 And then I need you to collect them.

18 MS. WITTY: That's already been --

19 THE SPECIAL MASTER: I need you to pull the  
20 backup from four months ago from that disc once you  
21 get those file shares.

22 MR. LATTIN: Okay. It's 112 days or 15  
23 cycles, so...

24 THE SPECIAL MASTER: Okay. Well, then as  
25 soon as they get it for you, I need you to pull it

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1 from your tape as well.

2 MR. LATTIN: Absolutely.

3 THE SPECIAL MASTER: Just pull a copy of your  
4 tape, so that way I have something at least that's --  
5 okay? We don't need to do anything with it. Just  
6 make a copy of it.

7 MR. LATTIN: Okay.

8 THE SPECIAL MASTER: All right. Now, I don't  
9 get -- how does it -- you are responsible also for the  
10 clinics' backup?

11 MR. LATTIN: For the connectivity?

12 THE SPECIAL MASTER: No, their backup. Like  
13 if I'm running a -- you have clinic and satellite  
14 offices. How does that work? You have -- UMC has  
15 clinics; right?

16 MR. LATTIN: Correct.

17 THE SPECIAL MASTER: Are you -- do they back  
18 up data at those clinics?

19 MR. LATTIN: All the servers, they all  
20 connect directly to the main campus, so all the  
21 servers and stuff would reside there.

22 THE SPECIAL MASTER: I run a clinic. I'm the  
23 manager at a local office. I have people that work  
24 for me, etc. Is there a diagram that explains to me  
25 how the clinic systems work?



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1 MR. LATTIN: I have a basic diagram of how  
2 it's all tied into the UMC network.

3 THE SPECIAL MASTER: That would be fantastic.

4 MR. LATTIN: But, yes, because it -- we all  
5 operate as basically one big organization. The  
6 clinic, in terms of the network, it all looks the same  
7 to us so --

8 THE SPECIAL MASTER: I just want to -- that's  
9 all I want to know. I just want to understand how you  
10 actually organize data.

11 We're going to put this in as an exhibit.

12 MR. LATTIN: Just kind of threw this  
13 together. It's a little rough. But there on the  
14 right-hand corner, we have Enterprise, Nellis, Spring  
15 Valley, all -- that's all of our clinical areas, Quick  
16 Cares, and then they connect directly back to our core  
17 of our network, which is in the center.

18 THE SPECIAL MASTER: And they have servers  
19 locally there that connect?

20 MR. LATTIN: No. All the servers reside in  
21 our -- either our data center on the main campus or --

22 THE SPECIAL MASTER: Do you have dumb  
23 terminals, then, at every clinic?

24 MR. LATTIN: Normally be on, you know,  
25 Windows XP or, more recently, 7 box that they connect

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1 to.

2 THE SPECIAL MASTER: So they're not  
3 terminals. They're like boxes?

4 MR. LATTIN: It's a full workstation, yes.

5 THE SPECIAL MASTER: All right. So -- but  
6 everything those workstations connect to, there is no  
7 connectivity run out of the local clinic at a server  
8 level?

9 MR. LATTIN: It all runs back to the main  
10 campus Exchange.

11 THE SPECIAL MASTER: Everything?

12 MR. LATTIN: Correct.

13 THE SPECIAL MASTER: So we'll get back to  
14 that, because that's actually in the transcript. I  
15 want to just touch back on the preservation.

16 Do you have a question?

17 MR. TOSTRUD: Yes, I would like to enter into  
18 evidence an e-mail from Lonnie Richardson to Plaintiff  
19 Dan Small dated Friday, March 21st, 2014. This was  
20 provided us also by Mr. Small, and it relates the  
21 right to the documents and files stored on local C  
22 drive. I provided a copy to defense counsel before  
23 the break.

24 THE SPECIAL MASTER: Would counsel like an  
25 affidavit as well for this?

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1 MS. FOLEY: Yes, please.

2 THE SPECIAL MASTER: When you provide an  
3 affidavit -- when you write the one affidavit for  
4 Mr. Small, can you please have them make --

5 MR. TOSTRUD: Can we just include both  
6 exhibits in one affidavit?

7 THE SPECIAL MASTER: That's fine. As long as  
8 the who, what, when, and where...

9 MR. TOSTRUD: Yes.

10 THE SPECIAL MASTER: Do you -- UMCPost, who  
11 is on that list?

12 MR. SCHAIBLEY: Everybody with a mailbox.

13 THE SPECIAL MASTER: All right. So now I  
14 know you've seen this. So, basically, as I read  
15 this -- have you seen this, Counsel?

16 MS. FOLEY: I have not seen it.

17 THE SPECIAL MASTER: Here, take my copy if  
18 you want.

19 MR. TOSTRUD: Ms. Witty has seen it.

20 (Exhibit 10 was marked for identification  
21 by the Certified Court Reporter.)

22 THE SPECIAL MASTER: This is a huge step  
23 forward. We have a network...

24 Did everyone have a chance to read it? Did  
25 you read it?

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1 MR. LATTIN: Yes.

2 THE SPECIAL MASTER: Okay. So from a backup  
3 perspective, you don't back up the local computers?

4 MR. LATTIN: Correct.

5 THE SPECIAL MASTER: What is included in your  
6 backup, just for my own -- do you have a list of  
7 everything that you are backing up?

8 MR. LATTIN: I can -- yes, I have most of it.  
9 Normally we just do, you know, a slash, which backs up  
10 everything on the server.

11 THE SPECIAL MASTER: What server? All the  
12 servers?

13 MR. LATTIN: The majority of them, yes. I  
14 have the giant list here, but, yes, I could probably  
15 present --

16 THE SPECIAL MASTER: I don't want another  
17 giant list. No more giant lists.

18 MR. LATTIN: I could present a more concise  
19 list of all the servers that are getting backed up.

20 THE SPECIAL MASTER: But none of these  
21 servers are actually kept for more than a year?

22 MR. LATTIN: With the exception of a couple  
23 of the UNIX servers that pertain to this.

24 THE SPECIAL MASTER: What are they for?  
25 Billing?

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1 MR. LATTIN: What are the UNIX -- UNIX  
2 servers, seven-year on that one?

3 MR. CLARK: Yes, we have seven-year policy on  
4 the UNIX servers and a one --

5 THE SPECIAL MASTER: System V? May I ask,  
6 what kind of UNIX?

7 MR. CLARK: AIX HP-UX.

8 THE SPECIAL MASTER: Superdome?

9 MR. CLARK: No, we actually don't. We've got  
10 even an old Solaris.

11 THE SPECIAL MASTER: Really? What sits on  
12 the UNIX boxes?

13 MR. CLARK: AIX is mostly ancillary operating  
14 packages like for the lab, MSAT, which is for the ER.  
15 We have a SAP ERP box to transfer data to the County  
16 on a homegrown product for file transferring.

17 THE SPECIAL MASTER: You said "SAP"; right?

18 MR. CLARK: Yes.

19 We call it UMPRP01. We transfer files and  
20 receive files from the County.

21 THE SPECIAL MASTER: So it's your SAP sync  
22 box?

23 MR. CLARK: Uh-huh. And then we have another  
24 AIX box, two of them for a JCAPS, which is our  
25 Enterprise interface engine, and that covers all the

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1       AIX boxes.

2               THE SPECIAL MASTER:   Okay.   So beyond those,  
3       that's it?   That's all you keep for a year -- or seven  
4       years, actually?

5               MR. CLARK:   Yes.

6               MR. TOSTRUD:   Counsel, do we have the  
7       original desktops for the custodians?

8               MS. WITTY:   The desktops that they currently  
9       use are the desktops that they've been using  
10      throughout the period, yes.

11              THE SPECIAL MASTER:   And they've all received  
12      preservation notices?

13              MS. WITTY:   Yes.

14              THE SPECIAL MASTER:   Did they sign they  
15      received it?

16              MS. WITTY:   It is -- no, but we can document  
17      when they received it.

18              THE SPECIAL MASTER:   Please do it, just for  
19      everybody's sake.

20              Before I talk about your e-mail that you  
21      provided, I want to talk about backup tapes.

22              Do you use any third-party backup services,  
23      like Mozy or anything like that?

24              MR. LATTIN:   No.

25              MR. TOSTRUD:   Plaintiffs have any questions?

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1 MR. FORREST: I'm just wondering, there have  
2 been references between XP and Windows 7. Are all the  
3 26, or the 6 and 7, are they all still on XP?

4 THE SPECIAL MASTER: When we get the  
5 custodian interview form -- the chain of custody will  
6 document the systems from which -- actually, it won't.  
7 Thank you. I need to know, like he's wanting -- well,  
8 ask your question and then I'll --

9 MR. FORREST: Okay. Are all of the relevant  
10 26 custodians, plus or minus Myers and/or Dwyer,  
11 whatever, are all of their desktops currently running  
12 XP?

13 THE SPECIAL MASTER: You can say "I don't  
14 know" and "I have to check."

15 MR. SCHAIBLEY: Yes, I need to get back to  
16 you on that.

17 THE SPECIAL MASTER: Can you please just  
18 check and put together a list to provide to counsel  
19 and circulate it?

20 MR. SCHAIBLEY: Yes.

21 MR. FORREST: It might be a good idea not to  
22 update any of those desktops that have --

23 MS. WITTY: We've already addressed that.

24 THE SPECIAL MASTER: We've already taken care  
25 of that.

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1                   Who was in charge of the updates on the  
2           actual -- on the ground doing the work?

3                   MR. SCHAIBLEY:   Which updates?

4                   THE SPECIAL MASTER:   If I -- before you swap  
5           out any of the custodians' boxes, who would do it?

6                   MR. SCHAIBLEY:   Our desktop support team.

7                   THE SPECIAL MASTER:   Can you please make sure  
8           the desktop support team gets the litigation hold  
9           notice, signs receipt of it, and there is no  
10          confusion, because we have tried through the CIO  
11          level, and I have concerns that the message may be  
12          getting lost.

13                  MR. TOSTRUD:   May we also get the names of  
14          the people who are on that team?

15                  THE SPECIAL MASTER:   The desktop manager.   I  
16          don't need all of the people.   I just need -- when  
17          they get the --

18                  MR. SCHAIBLEY:   The desktop manager is Susie  
19          Kisner.

20                  THE SPECIAL MASTER:   Oh, Susie.   We already  
21          spoke to her this morning.

22                  MS. WITTY:   And that's all included within  
23          the IT org chart.

24                  THE SPECIAL MASTER:   Exactly.   So I just want  
25          to be clear.   My immediate concern, so we don't have



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1 another conversation like I just had on the phone, and  
2 that they know not to do anything.

3 So anything more relating directly to the  
4 backups?

5 MR. TOSTRUD: Just as Plaintiffs' counsel and  
6 we have an obligation to our class to protect the  
7 class, we would ask that mirror images be made of all  
8 those desktops, whether you are going to order it or  
9 not, but it's up to you, but I'm just on the record  
10 making that request.

11 THE SPECIAL MASTER: I do want to discuss  
12 this e-mail because this e-mail suggests or indicates  
13 that people don't actually follow your storage  
14 policies.

15 I'll give UMC a chance to review the e-mail,  
16 and I would like to -- if you could do me a favor.  
17 Anybody within UMC's IT team, explain to them what  
18 exactly is happening and then we can revisit this.

19 Let's go off the record for a second.

20 (LUNCH RECESS.)

21 //

22

23

24

25

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1 Las Vegas, Nevada; Monday, April 7, 2014

2 1:15 P.M.

3 Afternoon Session

4  
5 THE SPECIAL MASTER: So on the record.

6 I'm going to order UMC to preserve and create  
7 forensic images -- before I get to that, I'm going to  
8 order UMC to create a spreadsheet of all 26 custodians  
9 that have their full name, their device, the operating  
10 system version number on it, for any user who doesn't  
11 have a computer that's dedicated to them, meaning in  
12 their office, within, that they sit and log in -- that  
13 they log in and access more than 10 times a month,  
14 that they physically go to and sit in, that's what  
15 constitutes a computer for a user, meaning it's in  
16 their office and they sit down and use it. Or I want  
17 another table created -- or in addition, I want  
18 another table created that identifies any computer  
19 that any one of those 26 individuals, again with their  
20 first name, their last name, the operating system  
21 version number that has been -- that is accessed more  
22 than five times by that user in a single month.

23 If it turns out that every one of the 26  
24 custodians is accessing -- we'll see what the data  
25 comes back as. The goal here is to identify the

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1 computers that are used by these custodians on a  
2 regular basis to perform their duties.

3 And this is largely based on my belief that  
4 by an e-mail provided by plaintiffs that's speaking to  
5 the current issues at UMC with regards to user  
6 behavior -- with regards to user behavior and how they  
7 are saving things.

8 I'm also ordering UMC to provide an affidavit  
9 to provide me context for the e-mail and why it was  
10 sent and what the reasoning was, meaning was there  
11 some issue that came up, is it because of -- whatever  
12 the reasoning was, to give me a context for the  
13 e-mail. Okay?

14 I'm also going to order for the next hearing,  
15 whatever dates we will set, leaning towards the 24th  
16 and 25th of April, that we -- that the CEO and CIO  
17 make themselves here and present and available.

18 I am very disappointed and frustrated by the  
19 fact that UMC, despite counsel for UMC's repeated  
20 attempts, my repeated attempts to try to figure out  
21 the most basic knowledge, including, but not limited  
22 to we had a conversation earlier today when the  
23 manager -- customer support manager said she was  
24 contacted last week where she was informed that she  
25 shouldn't be recycling or wiping.

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1                   Whether or not that has happened or not,  
2           which I make no judgment as to whether it's happened  
3           or not, it's not acceptable because we had a hearing  
4           on March 10th where the CIO was here, where both the  
5           Court and myself ordered him to inform his employees  
6           immediately therein to preserve and cease all  
7           potential spoliation of mobile devices and anything  
8           else.

9                   That clearly was not done because on the  
10          record we had testimony today where she did not  
11          receive such notice until last week. I want them both  
12          here and present so they understand the gravity and  
13          importance of the situation.

14                  My order will be reflected as such; and when  
15          I issue my order based on the hearings in the last two  
16          days, it will be included in there as well.

17                  I now open it for any requests and additional  
18          comments. Counsel?

19                  MR. TOSTRUD: Plaintiffs' counsel would  
20          simply request an addendum and the addition of  
21          potentially three names to the list of 26 custodians  
22          that you have ordered to be preserved, their local  
23          drives, local computers be preserved. When we reached  
24          initial agreement on the list of 26 custodians, that  
25          was done several months ago.

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1                   Since that agreement was reached, we've  
2                   learned a tremendous amount about this litigation and  
3                   preservation efforts, or lack thereof, at UMC.

4                   So we would request that, at a minimum,  
5                   Lonnie Richardson, who is the author of the e-mail you  
6                   just referred to, Exhibit 10, I believe it is, we ask  
7                   that his local drive be mirror-imaged or copied or  
8                   preserved.

9                   We would also ask that Ernie McKinley, if  
10                  he's not on the list, that his be preserved and  
11                  copied.

12                  And I think, importantly, there is a new CEO  
13                  at UMC, and I don't know who the person is. It used  
14                  to be Brian Brannman, but whoever that new CEO is.  
15                  Maybe you guys can tell us who that is.

16                  MS. WITTY: The new CEO at UMC is Lawrence  
17                  Bernard, B-e-r-n-a-r-d.

18                  MR. TOSTRUD: I believe he was on the list;  
19                  correct? Was he on our list of 26 custodians?

20                  MS. WITTY: No.

21                  MR. TOSTRUD: Okay. That, to me, seems to be  
22                  an obvious one.

23                  THE SPECIAL MASTER: I'm going to take it  
24                  under advisement.

25                  Do you have anything you would like to

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1 respond with?

2 And let me be clear. Just so I understand  
3 from our last hearing, which we haven't fully gone  
4 through, the initial list of custodians was what was  
5 suggested by plaintiffs and you, and then you got --  
6 and so if you want or have any comments as to each of  
7 the three individuals, I'd welcome them.

8 MS. WITTY: With regard to those three  
9 individuals --

10 THE SPECIAL MASTER: I would like an  
11 affidavit, by the way, from plaintiffs explaining why  
12 each one of those individuals would be considered, for  
13 my records, because I don't know anything about any of  
14 the individuals.

15 MR. TOSTRUD: Certainly.

16 THE SPECIAL MASTER: I'm not going to issue a  
17 finding or order today around it.

18 MS. WITTY: With regard to those three  
19 individuals, Lonnie Richardson has not been with UMC  
20 and was not with UMC during the relevant time period  
21 to this lawsuit. He is new to UMC within the past  
22 eight months. I believe he started in October of  
23 2013.

24 THE SPECIAL MASTER: So he wouldn't have made  
25 any records?

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1 MS. WITTY: Ernie McKinley is the chief  
2 information officer. And while I understand the  
3 perspective from the preservation and ESI discovery  
4 standpoint, I'm not sure that his collection would  
5 regard any relevant material with -- as to the claims  
6 of this lawsuit.

7 The CEO, understanding that he is currently  
8 in a position of authority, his role would not have  
9 covered -- again, it would not overlap with the time  
10 period relevant to this lawsuit.

11 THE SPECIAL MASTER: I'm not going to issue  
12 any ruling today because I actually don't have any  
13 context as to why -- I understand your explanation.  
14 I'd like to know more as to why for each of these  
15 individuals. We have a bunch of other things to cover  
16 today. I'll take it under advisement. I will,  
17 however, issue -- I will, on a -- I have some  
18 questions. I mean, I'm going to quickly touch on it.

19 How does the current CEO that just joined, of  
20 this year, have relevant information?

21 MS. FOLEY: He's been with us for a while.

22 THE SPECIAL MASTER: Oh, he has?

23 MS. WITTY: Only about a year.

24 MR. TOSTRUD: Well, not only that, but I  
25 think that there is a fundamental misunderstanding

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1       that the time period for the lawsuit is over. We  
2       filed our class complaint and collective action in  
3       July of 2012, but it's continuing to this day. We  
4       don't know what's happening. We haven't reached --

5               THE SPECIAL MASTER: So your assertion is  
6       it's still ongoing?

7               MR. TOSTRUD: Well, they've changed --  
8       they've remediated the practice. They made a change  
9       in timekeeping, but we don't know that things have  
10      stopped. We represent these people through today and  
11      will continue --

12              THE SPECIAL MASTER: Are they still  
13      employees, some of these individuals or all of them?

14              MS. WITTY: Some individuals that they added?

15              THE SPECIAL MASTER: No, no, the class.

16              MR. TOSTRUD: Yes, these are current  
17      employees, many of them. We have 614 Fair Labor  
18      Standards Act --

19              THE SPECIAL MASTER: So let me understand.

20              MS. WITTY: Current and former. They're --

21              THE SPECIAL MASTER: Okay. I got it.

22              But, I mean, there's more -- I get it.

23              But would the current CEO be involved in any  
24      decisions relating to pay or these issues that are  
25      before the Court now?



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1 MS. FOLEY: No. The time has passed.

2 MR. TOSTRUD: With all due respect, the time  
3 hasn't passed. The lawsuit continues. We filed the  
4 case, and it continues through today.

5 THE SPECIAL MASTER: Okay. I'm going to  
6 table --

7 MS. FOLEY: The opt-in period is over.

8 MR. TOSTRUD: No. The time period for opting  
9 in is over.

10 THE SPECIAL MASTER: But they're saying the  
11 abuse is still -- or the violation is still ongoing;  
12 correct?

13 MR. TOSTRUD: We're -- that's part of our  
14 investigation.

15 THE SPECIAL MASTER: That's what they are  
16 asserting.

17 MR. TOSTRUD: If the former CEO who was on  
18 the list is relevant, then people --

19 THE SPECIAL MASTER: Okay. I understand.  
20 I'm just trying to understand. They are asserting  
21 that the violation is ongoing. What I'm asking you  
22 is, your position is that it's not an ongoing  
23 violation or there was no violation? I'm just trying  
24 to understand -- I'm just trying to understand if --

25 MS. WITTY: It encompasses both of those.

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1                   THE SPECIAL MASTER: -- these people will  
2           have relevant information, because based on what he's  
3           telling me, it sounds like the CEO, if they believe  
4           it's an ongoing violation, would certainly have  
5           relevant information.

6                   Now, I'm not ready to make a ruling because  
7           I'm also not sure -- I have to read over my order to  
8           see if, A, it's within the scope of my orders and that  
9           if I'm comfortable adding them. I do think it is, but  
10          I do want to read it over, and I do want to make it  
11          through the other things that I have on my list to do  
12          today.

13                  MR. TOSTRUD: Just in the interest of full  
14          disclosure, we intend to send a further preservation  
15          letter then to defense counsel --

16                  THE SPECIAL MASTER: Well, that's what I was  
17          going to suggest. I'm going to reserve issuing -- I'm  
18          going to withhold issuing any order or decision on  
19          this matter until I've had a chance to read a  
20          three-page letter from plaintiffs and, if you want to  
21          respond, three-page from defense. You have seven days  
22          from when he sends me the letter, CC both parties. I  
23          will issue a decision three days thereafter. Okay?  
24          Then if you want, you can appeal to the Judge.

25                  Now off the record.

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1 (OFF RECORD.)

2 THE SPECIAL MASTER: Back on the record.

3 Couple of pressing things I want to go over,  
4 and I want to keep going through the transcript.

5 Before we broke for lunch -- let's go over  
6 the collection itself.

7 I've been able to determine through  
8 conversation --

9 MS. WITTY: Oh.

10 THE SPECIAL MASTER: Off the record or still  
11 on the record?

12 MS. WITTY: On the record. I apologize.

13 Before moving on, could we clarify with  
14 regard to the spreadsheet that you requested for the  
15 computers whether you mean five log-ins or five days  
16 in which they logged in to a specific computer?

17 THE SPECIAL MASTER: Within a month five  
18 log-ins.

19 MS. WITTY: So if they logged in five times  
20 in one day, that would qualify to be entered onto the  
21 list?

22 THE SPECIAL MASTER: If it turns out that my  
23 algorithm results in 500 computers, please let me  
24 know, and I will amend my algorithm immediately.  
25 Okay?

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1 MS. WITTY: Okay.

2 THE SPECIAL MASTER: I don't know. Most  
3 people log into a computer once and stay logged in for  
4 the day. But if people are floaters and they're  
5 logging in and out of machines, I'll revise and amend  
6 accordingly.

7 I'm operating under the assumption that a  
8 user logs in, piddles around, does whatever, does  
9 their work, views whatever in Las Vegas, logs off,  
10 goes to lunch, comes back, logs back on; maybe they go  
11 to a different area of the building.

12 If my assumption is wrong, please let me  
13 know -- let counsel know and let me know as soon as  
14 possible, and I will then amend it accordingly. Just  
15 provide me the statistics so I can then act in an  
16 educated fashion.

17 Okay. Returning back to the collection and  
18 the collections scripts and the hash values, did we  
19 make any progress in determining whether the evidence  
20 is actually all of the evidence in your possession? I  
21 know you collected all the evidence minus the network  
22 file shares; but the original evidence you collected,  
23 is that now all in your possession?

24 MR. EDMONDSON: I believe it's not all in my  
25 possession at this point from what we have compared.

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1           THE SPECIAL MASTER: All right. So I'm going  
2           to go with near certain, because I just ran a -- the  
3           nice thing about the way it was given to me is I  
4           converted it all to a spreadsheet and then I just ran  
5           a sum totaling, and I got over 80 gigs.

6           So I'm going with its not, because I ended up  
7           with about 195 gigs, and you said you only had 80  
8           gigs. So that means 110 gigs didn't make the trip.

9           Now, that's, again, no reflection of counsel,  
10          because it was former counsel and former IT person.

11          Now, that doesn't excuse it. Okay? I want  
12          to be clear. It doesn't excuse it. But my goal right  
13          now is to just fix it. So calculate the hash values,  
14          put it on a -- yes?

15          MS. WITTY: We actually discussed part of  
16          this issue at lunch, and because we do have the  
17          collection that was done both in April of 2013 and  
18          August of 2013, and additional areas where information  
19          will be collected, UMC now has the capability to do  
20          with EnCase 7 a forensic image and generate MD5 hash  
21          values for that, and that new subset or that new set  
22          of data would be what we would continue processing.

23          THE SPECIAL MASTER: The original collection,  
24          just in EnCase?

25          MR. SCHAIBLEY: Yes.

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1 THE SPECIAL MASTER: So you're just getting  
2 just instead of him?

3 MR. SCHAIBLEY: Well, what I would look at  
4 doing is taking the original collection and creating a  
5 new forensic image of the original collection using  
6 EnCase with the assistance of Mr. Edmondson and then  
7 providing all of that, E01 files, to him.

8 And rather than creating one individual E01  
9 file for the entire collection, creating an E01 file  
10 for each custodian.

11 THE SPECIAL MASTER: Well, that sounds smart.  
12 Plaintiffs?

13 MR. PIXLEY: You are making an E01 of the  
14 entire disc, or are you making a logical of his file?

15 MR. SCHAIBLEY: Logical.

16 THE SPECIAL MASTER: Oh, does that answer  
17 that? Did you answer?

18 MR. SCHAIBLEY: I said "logical."

19 THE SPECIAL MASTER: Any issue with that?

20 MR. PIXLEY: No. I think it's a good idea to  
21 preserve it into an L01 file.

22 THE SPECIAL MASTER: I agree 100 percent.

23 MR. PIXLEY: So then were you going to  
24 de-dupe it and figure out what --

25 MR. EDMONDSON: Yes, I'll process it in a

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1 similar fashion.

2 THE SPECIAL MASTER: Can you record what you  
3 do?

4 MR. EDMONDSON: Yes.

5 THE SPECIAL MASTER: So that way we have a  
6 record.

7 MR. PIXLEY: That answers it. Thank you.

8 THE SPECIAL MASTER: We can't have a rolling  
9 production until you have everything. When will that  
10 be? I'm just asking, and then I'll order you. So I'm  
11 thinking Thursday.

12 How about this. I'm going to help you both  
13 out real quick.

14 Let's go off the record.

15 (OFF RECORD.)

16 THE SPECIAL MASTER: Back on the record.

17 One more time.

18 MS. WITTY: So the five agreed-upon  
19 custodians are now a subset of seven to include the  
20 two executive assistants to the chief human resources  
21 officer and the CEO. I'm going to name them again for  
22 the benefit of the record. That's Brian Brannman; his  
23 executive assistant, Cindy Dwyer; chief human  
24 resources officer, John Espinoza; the administrative  
25 assistant to HR, Claudette Myers; Doug Spring; James

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1 Mumford; and Jackie Panzeri.

2 THE SPECIAL MASTER: So any -- I know you've  
3 requested three.

4 MR. TOSTRUD: We can make it a round 30.

5 THE SPECIAL MASTER: No, no, no. We've  
6 requested three, and I'm not ruling. But the 27 do  
7 you agree with?

8 MR. TOSTRUD: Yes.

9 THE SPECIAL MASTER: Okay. Great.  
10 Fantastic.

11 Now, I want a rolling production, and this is  
12 how this is going to happen. Did we get privilege log  
13 agreement?

14 I take that as an overwhelming yes.

15 MR. TOSTRUD: I think so. They're going to  
16 have to amend the privilege log perhaps. I don't  
17 know.

18 MS. WITTY: Yes, there will absolutely be an  
19 amended privilege log.

20 THE SPECIAL MASTER: I'm going with the sense  
21 not all the evidence has made the trip yet, and they  
22 haven't seen it all, there is a very high likelihood  
23 that there will be a substantial amount of amending  
24 ongoing.

25 Have you agreed more to the -- rather than



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1 the -- the substance to the form?

2 MR. TOSTRUD: Yes.

3 THE SPECIAL MASTER: And the process?

4 MR. TOSTRUD: Yes.

5 THE SPECIAL MASTER: That's all I care about.

6 I look forward to having very few privilege

7 conversations with you all.

8 Now, I'm going to do this rolling. Minus the

9 700 encrypted mystery files that we're not exactly

10 sure how they ended up encrypted, that we are going

11 to, by Friday, give me an answer or I'm going to bring

12 someone in to get me an answer.

13 And I don't think we are going to include the

14 network file.

15 And then I'm going to carve out the network

16 file share -- shall we have the 27 custodians plus the

17 network file shares? Is that how we are doing this?

18 MS. WITTY: (Nodded head up and down.)

19 THE SPECIAL MASTER: Does counsel for

20 plaintiff understand what I'm saying? Because if not,

21 you can talk to your experts just to make sure.

22 I just want to make sure everybody is on the

23 same page, because I don't want to revisit this.

24 So we have 27 plus a potential 3, and we have

25 the network file shares that are responsive for those

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1 specific custodian groups like payroll, HR, I have no  
2 idea, whatever is deemed responsive that they touched,  
3 that is included. Okay?

4 We have a rolling production.

5 Do we know how to use eCapture to do the  
6 de-duping of the multiple OST and PST files here?

7 MR. EDMONDSON: It's used for the  
8 de-duplication of the e-mails once they've been  
9 extracted.

10 THE SPECIAL MASTER: Yes, I get that. But  
11 I'm saying do you know how to use it to make sure that  
12 they are not going to read 20 copies of the same  
13 e-mail, because Mr. Mumford has 25 different PST  
14 files, of which I'm assuming a large number of them  
15 have duplicative e-mails in them.

16 MR. EDMONDSON: As long as they are  
17 identical, they will be removed during the  
18 de-duplication process in eCapture, which it did  
19 remove previously when we used it.

20 THE SPECIAL MASTER: Send me a screen shot of  
21 the configuration just so we can -- to both sides so  
22 we can make sure it's configured as-is. All right?  
23 That way we know -- because one of the problems we had  
24 earlier was with the options that were selected and  
25 not selected.

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1                   So before you do anything, take me a screen  
2                   shot, send it to both sides, unless, Plaintiffs and  
3                   UMC counsel, you have an objection to that.

4                   MS. WITTY: No.

5                   THE SPECIAL MASTER: Because one thing that  
6                   that happened between the second and third was we  
7                   forgot to hit the right buttons. So hopefully, as a  
8                   group, we will be able to make sure everything is  
9                   configured properly.

10                  We'll go over the revised ESI protocol in a  
11                  minute.

12                  Does Plaintiff have anything else they want  
13                  to add to this before I list how this is going to go  
14                  with people? So you are going get a screen shot of  
15                  the eCapture pro configuration. I'm relying on you to  
16                  QC what the configuration is that he's going to be  
17                  running. You are primary, meaning that I'm expecting  
18                  you to get it right, and we are simply QC'ing it. The  
19                  idea is, is that there are 25 of the same e-mail  
20                  messages theoretically for some of these custodians  
21                  that nobody should have to read.

22                  So we agree, Plaintiffs? Is that acceptable?

23                  MR. GODINO: (Nodded head up and down.)

24                  THE SPECIAL MASTER: Okay. Because when I  
25                  tallied your data sets, they were way bigger. So I'm

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1       trying to understand -- today's the 7th; right?

2               MS. WITTY: Yes.

3               THE SPECIAL MASTER: Let's say the 16th. How  
4       much can you guys take in one shot? Don't say  
5       everything, because nobody is going to read it all at  
6       once.

7               So how many, like in a -- if we had a rolling  
8       production and I gave you three custodians -- how many  
9       custodians can you take at once and properly run  
10      through whatever processes you are going to run  
11      through before they get...

12              MR. FORREST: It depends on how many gig it  
13      is; right?

14              THE SPECIAL MASTER: Figure lots of gigs. I  
15      mean, it's hard for me to guess because I couldn't  
16      even remotely tell you. I mean --

17              MR. FORREST: Well, I think the last -- I  
18      don't know how many gigs the last one was. Whatever  
19      it is, we'll process it, whether it's going to be a  
20      day or two days...

21              THE SPECIAL MASTER: Okay. That wasn't  
22      helpful.

23              Three custodians on the 16th to go across.  
24      I'm going to start with just three, and I want to  
25      troubleshoot it. We're going to have a hearing on the

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1 17th for an hour to go over -- is that enough time  
2 between -- the 16th, 9:00 a.m. You can send it Morse  
3 code, pigeon courier, however. It's in his hands on  
4 the 16th at 9:00 a.m.

5 MS. WITTY: So essentially you're requiring  
6 the production on the 15th?

7 THE SPECIAL MASTER: Well, you can do it  
8 overnight using FTP, SFTP, or I don't know how you  
9 guys move data.

10

11 MR. TOSTRUD: Well, as -- I mean, we --

12 MS. WITTY: But we have to encrypt it.

13 THE SPECIAL MASTER: Yes, but you can encrypt  
14 it as a packet and send the encrypted packet.

15 MR. FORREST: Well, yes, depending on how  
16 large it is. If we're getting -- taking 10 or 20  
17 megabytes over FTP, then we've got to encrypt it, and  
18 then we've got to move it to --

19 THE SPECIAL MASTER: Sorry. I have OCR to my  
20 office. You don't have OCR to your office. I have a  
21 cable that's -- it can run like --

22 MS. WITTY: I can guarantee you that our  
23 firm's system is not going to beat that.

24 THE SPECIAL MASTER: Okay. Recognizing we're  
25 using FedEx, then, and TrueCrypt, I'm going to make it

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1 the 17th at 9:00 a.m. -- 10:30 a.m., you have 10:30  
2 delivery. So either you are blaming FedEx, or it's  
3 there.

4 MS. WITTY: I know previously we've gone  
5 directly to plaintiffs' counsel --

6 MR. TOSTRUD: Send it directly to  
7 Mr. Forrest.

8 MR. FORREST: Yes. We'll give you the  
9 address.

10 MS. WITTY: I don't -- okay.

11 MR. FORREST: Okay. So we have 10:30. We  
12 have to decrypt it, we've got to load it, we've got to  
13 index it, and then we've got to examine it.

14 THE SPECIAL MASTER: We're only looking for  
15 errors. If it works, have a party. But all I care  
16 about is making sure you get it with no errors.  
17 Because before I have him do the remaining 23 plus the  
18 network file shares, I want to make sure it works.

19 MS. WITTY: I'm concerned about the time for  
20 review for privilege.

21 THE SPECIAL MASTER: I think you should be  
22 too.

23 MS. WITTY: I'm extremely concerned about  
24 that.

25 MR. TOSTRUD: We have a claw-back agreement

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1 in place.

2 THE SPECIAL MASTER: They are looking at  
3 almost twice as much data.

4 MS. WITTY: And we've had -- well, we have --

5 THE SPECIAL MASTER: Let's go off the record  
6 here.

7 (OFF RECORD.)

8 THE SPECIAL MASTER: Let's go on the record.  
9 Plaintiff, can you please provide who you  
10 would like for the three custodians to be initially.

11 MR. TOSTRUD: For the initial three  
12 custodians, we would ask for Mr. John Espinoza,  
13 Mr. Doug Spring, and Mr. James Mumford.

14 THE SPECIAL MASTER: And Counsel for UMC, it  
15 was off the record you requested it just be one to  
16 start. I'm noting that I haven't --

17 MS. FOLEY: Correct. Ms. Witty knows the  
18 kind of ratios of who is bigger and who is smaller.

19 THE SPECIAL MASTER: Right. So you want a  
20 chance to confer with -- he has the actual current  
21 data set on his computer right now. You can look, if  
22 you want to take a quick glance.

23 I know that won't answer the privilege  
24 question. So the question I have for you is, the  
25 three custodians that were just identified, will they

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1 have -- do you believe they will be privilege heavy?

2 MS. WITTY: Mr. Espinoza and Mr. Spring have  
3 been significantly involved in attorney-client  
4 communications; Mr. Mumford, not as significant.

5 THE SPECIAL MASTER: Why don't you spend a  
6 minute, we'll go off the record, and you just look at  
7 the data set real quick.

8 (OFF RECORD.)

9 THE SPECIAL MASTER: Let's go back on the  
10 record.

11 So do you have any preference as to the  
12 three?

13 MS. WITTY: Our preference would be to do  
14 James Mumford first and Mr. Espinoza. Doug Spring is  
15 going to be much larger.

16 THE SPECIAL MASTER: All right. Here's  
17 what's going to happen. You're going to do  
18 Mr. Espinoza first, you'll do Mr. Mumford second, and  
19 you'll do Doug Spring third.

20 As to the first, we're just going to set the  
21 date for the first one. I'm not going to set the date  
22 for the other three -- other two until I get the first  
23 one done. I'm going to keep that date -- I'm going to  
24 help you out and push it a bit because I actually saw  
25 the data, and I -- I looked at the Robocopy script,



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1 just on the filenames alone.

2 MS. FOLEY: What about the privilege issue?

3 THE SPECIAL MASTER: Well, that's what I'm  
4 saying. I just looked at the filenames alone, and if  
5 you just look at the number of hits that come up for,  
6 like, labor or for -- and I'm just looking at the  
7 filenames. I'm assuming counsel is going to want  
8 to -- I mean, it's a lot of docs to review. I mean,  
9 you're talking about 4 to 5,000 -- there will be a lot  
10 of scintillating reading.

11 The point being that -- let's make it the  
12 21st.

13 Any errors and issues, though, that come up  
14 technically need to be resolved by -- I want -- let's  
15 be clear. But I had this -- let me be clear. By the  
16 16th, counsel for UMC must have it, and I want written  
17 confirmation from UMC's counsel that they are starting  
18 their process.

19 You will have one week, more or less, to do  
20 that privilege exercise. Okay?

21 That means before that day, any technical  
22 issues that arise need to be flagged immediately.  
23 Okay? Are we all crystal-clear as to this? Counsels  
24 for plaintiff?

25 MR. TOSTRUD: (Nodded head up and down.)

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1                   THE SPECIAL MASTER: Do you have any  
2                   objection to this? I think one week is enough to get  
3                   started, and then I'm going to rapidly increase the  
4                   rate at which things are going to happen, but I'm  
5                   going to let us and give everybody some leeway for the  
6                   first, because I realize that, inevitably as an  
7                   attorney, I've found that the privilege log, the form  
8                   that you come up with sometimes needs tweaking because  
9                   of document types, document formats, or any one of a  
10                  litany of things.

11                  I do fully expect, though, that the network  
12                  file share collection is completed and in hand, not  
13                  necessarily processed but completed by -- before --  
14                  what is today?

15                  MR. GODINO: 7th.

16                  THE SPECIAL MASTER: -- by the 14th.

17                  I'm also ordering Mr. Lattin to pull a disc  
18                  today of the network file share until this is done.

19                  MR. LATTIN: The entire share or just this?

20                  THE SPECIAL MASTER: Whatever folders that  
21                  those custodians have access to to be pulled.  
22                  Shouldn't be a problem because you have a full month  
23                  backup. So all you have to do is take the backup from  
24                  whatever it is, 28 days ago, and pull it and allocate  
25                  space or buy a new server if you have to, but I need

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1 to know that since that hasn't happened, that nothing  
2 going forward is being deleted.

3 I'd like ideally, and since it's on disc, can  
4 you run the script against the four months' old -- is  
5 the network file share four months?

6 MR. LATTIN: Correct.

7 THE SPECIAL MASTER: Could you run it four  
8 months back or do you want it run against current  
9 data? I mean, because it should have actually been  
10 done a year ago. So I'm going to defer to Plaintiffs  
11 as to how you would like it done, if you have any  
12 preference, before I determine it.

13 Do you want a chance to confer?

14 MR. TOSTRUD: Yes.

15 THE SPECIAL MASTER: Off the record -- wait.  
16 On the record. It doesn't mean that I'm going to  
17 grant it. Just I wanted them to give their input  
18 first.

19 Off the record.

20 (OFF RECORD.)

21 THE SPECIAL MASTER: Back on the record.

22 MR. TOSTRUD: So in response to your request,  
23 Special Master Garrie, Plaintiffs would request both  
24 the oldest version possible and the most recent  
25 version; but failing that, we would -- our preference

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1 would be to get the older -- oldest version possible  
2 if they force us to choose.

3 THE SPECIAL MASTER: So I'm going to split  
4 the difference, because I was thinking the same, but  
5 then I thought we could split the difference. Here's  
6 what's going to happen:

7 You are going to collect the oldest. You are  
8 going to run the search terms on the oldest. You are  
9 going to collect the newest. You are going to run the  
10 search terms on that. You're then going to run a hash  
11 value calculation.

12 Outside of e-mails, if -- the PSTs and OSTs,  
13 if you come back -- and you are going to notify me if  
14 there is anything more -- I am hoping that there is  
15 not a lot of PSTs and OSTs in your network file shares  
16 relating to your work. There shouldn't be, because  
17 there's like over a thousand of them within just the  
18 27 custodians that we have.

19 So I am assuming there will be no PST and OST  
20 files or e-mail messages and just work-related  
21 documents and spreadsheets. Is that an accurate  
22 assumption? Is that safe, do you think?

23 MR. SCHAIBLEY: Yes.

24 THE SPECIAL MASTER: Okay. So assuming that  
25 that's the case, it should just be a simple hash value

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1 analysis.

2 So I would like you to collect from --  
3 preserve four months and current, run the search,  
4 provide him both. Do you understand? So whatever the  
5 network file shares are for both of them, provide them  
6 to him. Run the searches against the oldest first,  
7 calculate the hash values for all of them, run the  
8 same search terms against the newest. Obviously, the  
9 union, pull; the rest, junk. Make sense?

10 MR. EDMONDSON: Yes.

11 THE SPECIAL MASTER: Any questions? Does  
12 that make sense, Counsel?

13 MS. WITTY: (Nodded head up and down.)

14 THE SPECIAL MASTER: Is that acceptable?

15 MR. FORREST: I'm wondering about the junk  
16 part in view of the fact that there may be additional  
17 search terms coming down the road.

18 THE SPECIAL MASTER: He's preserving both. I  
19 said preserve one --

20 MS. WITTY: In terms of production,  
21 production junk.

22 THE SPECIAL MASTER: No, stop, stop. I  
23 said -- let me be crystal-clear. I said preserve one,  
24 preserve today, run the delta, because I'm talking  
25 about production here.

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1 MR. FORREST: Okay.

2 THE SPECIAL MASTER: Right? Whatever you --  
3 and going forward, for new search terms, they will do  
4 it the same fashion, right, given that we're running  
5 defendants late.

6 At no point am I -- just to be crystal-clear,  
7 no deleting anything ever. Okay? Ever. Are we  
8 crystal-clear on this?

9 Mr. Lattin, you're just sitting back there  
10 nodding, so I need to hear a "yes."

11 MR. LATTIN: Yes.

12 THE SPECIAL MASTER: Okay. Thank you. Okay.  
13 Does that assure -- assuage your --

14 MR. LATTIN: Actually, and by "deleting,"  
15 you're including overwriting?

16 THE SPECIAL MASTER: I'm saying anything  
17 remotely resembling hitting the delete or backspace  
18 key or command in a UNIX environment or anything at  
19 all, whether it's overwrite, delete, or therein  
20 otherwise.

21 You run backups, so I don't think you do it  
22 anyway. So nothing -- I'm not even saying UMC would  
23 even think that that would happen or anything. So I'm  
24 not even -- I don't -- hope my order or my remarks  
25 should not be interpreted that I believe that UMC is

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1       doing anything, except UMC forgot to collect the  
2       network file shares in the initial collection, which  
3       is its own issue.

4               But I don't think that anybody in this room  
5       is going to overwrite or delete or do anything outside  
6       of follow the black letter of what I'm ordering.

7               Does that answer that?

8               MR. FORREST: Well, now I was just wondering  
9       whether the backups are still going to be on the same  
10      rotation schedule and we're going to --

11              THE SPECIAL MASTER: Well, why? You've got a  
12      four-month-old -- I mean, you want them to cease -- do  
13      you want them to hold copies of all of their network  
14      file shares? You are talking about a petabyte  
15      probably. I mean, you have over a petabyte. How much  
16      do you have?

17              MR. LATTIN: Currently on just the file  
18      share?

19              THE SPECIAL MASTER: Yes.

20              MR. LATTIN: A single backup is probably 2.3  
21      ter. It's probably 30 ter total for the four months,  
22      just estimating.

23              THE SPECIAL MASTER: Every day or each day?

24              MR. LATTIN: For the total.

25              THE SPECIAL MASTER: So day one, two, three,

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1 total is 30 ter?

2 MR. LATTIN: Yes.

3 THE SPECIAL MASTER: And what are you asking?

4 MR. FORREST: Withdrawn.

5 THE SPECIAL MASTER: All right. I'm just  
6 saying that that's a lot of data. I want to be clear.  
7 You're going to be reviewing it all. If I'm ordering  
8 it, you're going to -- I'm going to make sure that you  
9 understand that you are inviting 2.3 terabytes a day  
10 of potential -- well, maybe not. I have no idea, to  
11 be honest with you.

12 So I think it's fine. We have a snapshot.  
13 The custodians -- all of the custodians have signed  
14 and received and understand they should not be  
15 deleting; right?

16 MS. WITTY: And that will be reinforced.

17 THE SPECIAL MASTER: So if we go down this  
18 track and it turns out otherwise, we have a snapshot  
19 to compare against. So I don't believe there is any  
20 need to have a rolling preservation. They shouldn't  
21 be deleted; right? Nobody should be deleting from the  
22 network file sharing in payroll, in HR, and anywhere  
23 else; right?

24 The backup is just simply for collection  
25 purposes. We will have, if necessary, a separate



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1 conversation if it comes to light.

2 Okay. Now, to review, Mr. Espinoza is up  
3 first. On the 16th -- 17th or 16th?

4 MR. SCHAIBLEY: 16th.

5 THE SPECIAL MASTER: On the 16th, UMC  
6 technology forensic quasi team will provide to UMC  
7 counsel that information, whatever form they want, to  
8 review and create a privilege log. That privilege log  
9 will be provided in complete and totality by the 21st.

10 MS. WITTY: The 22nd will be the week.

11 THE SPECIAL MASTER: 21st is a Sunday?

12 MR. FORREST: Monday.

13 THE SPECIAL MASTER: All right. 22nd,  
14 because if they ship it on Sunday on FedEx, then  
15 they're probably -- the 22nd, 10:30 a.m. has to be  
16 sitting in his hands with the privilege log fully  
17 signed off on. Okay?

18 MR. FORREST: We'll take the disc. They'll  
19 take the privilege log?

20 THE SPECIAL MASTER: You are going to get the  
21 disc with the privilege log. I'm not making this  
22 complicated. And you can pull it off and send it to  
23 them using courier pigeon. All right? All right.

24 Now, my log files from my script -- I'm on  
25 page 39 of my transcript from the last hearing -- I

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1 didn't get them for the 26 custodians.

2 MS. WITTY: The 26, correct.

3 THE SPECIAL MASTER: Are they in the works?

4 MS. WITTY: Yes. It was a failure on --

5 THE SPECIAL MASTER: It's all right. We've  
6 met on Friday. So there is no need to apologize.

7 MS. WITTY: Our law firm could not process  
8 the zip file to transmit them. I have no idea why,  
9 but it's my --

10 THE SPECIAL MASTER: It's probably too big.  
11 Why don't you split it up and send it to her as three  
12 different files -- maybe five different files,  
13 actually. How big is it? I can put up a secure file  
14 server if you want. I'm just getting the Robocopy log  
15 files here, is what we're talking about.

16 MS. WITTY: I just sent electronic copies of  
17 the five custodians' Robocopy scripts, so Plaintiffs  
18 should have those five custodians.

19 THE SPECIAL MASTER: The full scripts or just  
20 the results?

21 MS. WITTY: The full scripts.

22 THE SPECIAL MASTER: Okay. All they need  
23 is -- actually, you know what?

24 MR. SCHAIBLEY: It's a zip file that's 9  
25 megs.

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1           THE SPECIAL MASTER: That's it? Okay. The  
2           script file is solely being submitted to Plaintiffs'  
3           counsel for no other evidentiary purpose other than to  
4           see the failure logs. Are we crystal-clear here?

5           MR. TOSTRUD: Yes.

6           THE SPECIAL MASTER: Okay. No conversation  
7           is to be had about this unless you see some pressing,  
8           dire need, and you will file a letter to me and to the  
9           other side about that. Are we crystal clear?

10          Specific to the Robocopy scripts you have  
11          just received, the sole purpose you received them is  
12          so you can see the failure logs.

13          MR. TOSTRUD: Yes.

14          THE SPECIAL MASTER: Okay. So 9 megs?

15          MR. SCHAIBLEY: Yes. It's a zip file that's  
16          9 megs. It contains a total of four folders. I just  
17          did each log file for the --

18          THE SPECIAL MASTER: I can take full 9, so as  
19          soon as you can get it, send it to me. Okay? I'm  
20          going to look at it. And the only reason -- it's the  
21          same script was run, so you don't need it.

22          Okay. Oh, I have a question for counsel from  
23          plaintiff. Last time we were speaking, you raised an  
24          interesting point about the clinics. We've got this  
25          wonderful diagram.

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1           As I understand it -- who is responsible for  
2           the clinics' IT systems?

3           MR. SCHAIBLEY: What do you mean "responsible  
4           for the clinics"?

5           THE SPECIAL MASTER: Well, he raised the  
6           point --

7           Well, why don't you repeat your point from  
8           the prior -- I can -- I'll repeat it, or would you  
9           like to?

10          MR. TOSTRUD: I can.

11          So UMC has a central campus which we've  
12          visited a couple of times and toured it. Our lawsuit  
13          revolves around that campus, but also we have people  
14          in our case who work at the Quick Care facilities.

15          And in the context of gathering relevant  
16          evidence, we wanted to get a better understanding of  
17          how the Quick Care facilities are managed  
18          electronically and, parenthetically, we also want to  
19          understand if there are other documents there.

20          But for your purposes, we want to understand  
21          how they are managed electronically with information  
22          and how they communicate with the central campus.

23          THE SPECIAL MASTER: That was the request.  
24          That wasn't what was granted.

25          But the gist that he does raise and that I do

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1        have questions about is that the script that was run,  
2        and it's -- the goal is to collect the responsive  
3        information and then search it accordingly with  
4        keyword search terms or predict what computer sys to  
5        review and whatever term you use to filter it down and  
6        turn it over.

7                In order to do that, we need to understand  
8        where all the data may sit. He raises a very good  
9        point that there could be data sitting at clinics.

10                Based on my limited knowledge, and I'm  
11        looking at this diagram, and I have the luxury of  
12        actually having a decent memory and being able to  
13        cross-reference the spreadsheet I was given earlier  
14        with the servers and what they really stand for.

15                But that all said, explain to me from the  
16        clinic side how -- what systems they have locally, if  
17        any.

18                MR. LATTIN: There shouldn't be any local  
19        server-type systems at any of the clinics.  
20        Everything, as far as they're concerned, would look  
21        the same at the clinic as it does on the main campus.  
22        It's all one big, contiguous network. In either  
23        service, they do use Exchange, file server, all come  
24        from -- the same as everybody on campus would use.

25                THE SPECIAL MASTER: So if a grievance is

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1 filed locally with a -- I think it was mentioned --  
2 they mentioned a grievance -- and I'm not speaking to  
3 merits or substance here. I'm just using it for  
4 context. Okay? I'm not saying that this happened or  
5 has happened. I'm just using it because the only  
6 other healthcare systems I know are patient-related,  
7 and that has no bearing here.

8 An issue happened; a grievance is filed.  
9 Just so I understand, that is never stored locally at  
10 the office or the clinic? Sorry.

11 MR. LATTIN: Not to my knowledge, no.

12 THE SPECIAL MASTER: Counsel?

13 MS. WITTY: It's kind of hard to answer that  
14 because of the term of art of "grievance."

15 THE SPECIAL MASTER: All right. Forget  
16 grievance. Somebody files a complaint with their  
17 manager, whatever, for -- I know digital sexual  
18 harassment, so I'm just going to stick with something  
19 that I have some expertise in serving...

20 But the point is, let's say somebody files a  
21 sexual harassment complaint with their manager at a  
22 clinic. Okay? Does that actually sit where?

23 MS. WITTY: It would go through HR.

24 THE SPECIAL MASTER: But I talked to the  
25 manager -- what I'm trying to understand is, I go --

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1 is there any data that that manager would have on his  
2 local computer at that clinic?

3 MS. WITTY: They should not.

4 THE SPECIAL MASTER: The IT guys, anything?

5 MR. LATTIN: They shouldn't. That was --  
6 what they've always been told is that you always save  
7 the files to the file share, file server so it gets  
8 backed up.

9 MR. CLARK: Can I go off record and help?

10 THE SPECIAL MASTER: Yes, let's go off the  
11 record.

12 (OFF RECORD.)

13 THE SPECIAL MASTER: Let's get back on the  
14 record, because I'm going to have to draw it out  
15 myself at some point.

16 MR. SCHABLEY: If one of the 26 custodians  
17 had logged into a computer at a Quick Care, that  
18 computer would have been identified and logged in the  
19 log scripts that Ms. Witty is providing you; and the  
20 Robocopy script, because that computer is connected to  
21 the network, would have gone and captured whatever was  
22 on that computer.

23 THE SPECIAL MASTER: Can you circulate the  
24 script itself?

25 MR. SCHABLEY: What do you mean "circulate

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1 the script"?

2 THE SPECIAL MASTER: The Robocopy script,  
3 could you send it to me?

4 MR. SCHAIBLEY: It's included in the zip  
5 file.

6 THE SPECIAL MASTER: Got it.

7 Theoretically, then, Counsel, based on what  
8 they are telling me, and that I've looked at the  
9 script right, if a user logs in from the clinic,  
10 it's -- that data would still be collected.

11 MR. TOSTRUD: I understand. I guess our  
12 concern is rather obvious, and that is that  
13 Mr. Schaibley I think indicated that there are --  
14 there is information stored on local C drives, and  
15 that information I don't think makes it back.  
16 Correct?

17 And in light of the e-mail in Exhibit 10 to  
18 this transcript, when you combine those two, there may  
19 be a lot of relevant information that's sitting out in  
20 the Quick Cares. So that's our concern.

21 THE SPECIAL MASTER: How about you give me a  
22 list of the custodians that sit in the Quick Care  
23 facilities, and then I'll make a -- I'll further  
24 explore it if I believe appropriate.

25 But right now, their script is pretty



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1 complete and thorough. What we might -- yes?

2 MR. PIXLEY: I just noted that the Robocopy  
3 script is designed to just target the user profile on  
4 that machine, not the machine itself. So that's why  
5 earlier I asked the question if somebody created a  
6 folder off the root of C called "My Stuff" and just  
7 put stuff in "My Stuff," the script would not include  
8 that data.

9 THE SPECIAL MASTER: Right. I agree, and it  
10 wouldn't be backed up, which is why we're grabbing the  
11 26.

12 MS. WITTY: A quick review of the 26, 27  
13 custodians: None of them are Quick Care, I don't  
14 believe any of the plaintiffs are -- the named  
15 plaintiffs, the original six.

16 MR. TOSTRUD: No, I don't believe the named  
17 plaintiffs have worked at Quick Care facilities, but  
18 we have opt-ins who have worked at Quick Care  
19 facilities, and we have opt-ins who would indicate  
20 that they have complained about these issues while  
21 they were working in Quick Care facilities.

22 THE SPECIAL MASTER: So here's what I want:  
23 I want a list of those individuals' names, and then  
24 I'll go from there, because I don't -- we don't even  
25 know how often they logged into the computers or what

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1       they were doing. So before I go down a rabbit hole, I  
2       want to at least understand.

3               Give me the list. I'm then going to order  
4       UMC to give me a corollary spreadsheet that says,  
5       "These users were logging into these computers," and  
6       etc., etc., so that way I can get some context, and I  
7       know how computers we're talking about, and I know how  
8       many devices, and so it stays reasonable and focused,  
9       if at all.

10              And that's also assuming that I believe  
11       that -- and also, if you are going to list them, you  
12       have to say why you believe they would -- what  
13       relevant information would be on these systems. For  
14       each one of the people, I would need to know for that  
15       person what it would be. Because it's a lot of  
16       relief, because they have -- these people could have  
17       been walking around the clinics logging into God knows  
18       what.

19              So before I even entertain it, there  
20       better -- I would like to know why you believe it is  
21       necessary, and then I will consider it.

22              And then, Counsel for UMC, I give you three  
23       days, business days to respond to their request as to  
24       why you believe it may or may not be necessary.

25              I am going to request, Mr. Clark, that you

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1 take your very expert and wide set of knowledge skills  
2 that you have as to UMC's design of Enterprise and the  
3 SAN and the other pieces and create a diagram that is  
4 actually intelligible of the data, so that way I can  
5 have a more cogent and cost-effective conversation,  
6 because if I do it, it will cost you a substantial  
7 amount more money and I'd have to go on-site and take  
8 pictures.

9 And if I find that that -- the diagram that's  
10 provided is insufficient or lacking or whatever, I'll  
11 then revisit your request. But he seems to be more  
12 than skilled and expert. And if necessary, I will  
13 virtually log in and verify it myself. Okay?

14 All right. And you are working on resolving  
15 the errors in the scripts. Did we pick a day when I'm  
16 going to get that?

17 MS. WITTY: We did not.

18 THE SPECIAL MASTER: Fantastic. Would you  
19 like to suggest a day or would you like me to pick a  
20 day? Sort of a trick question, but we'll -- you can  
21 suggest a day.

22 MR. SCHABLEY: I'd prefer to suggest a day  
23 for next week, just because I'm the one who will have  
24 to do that, along with the new EO1 files.

25 THE SPECIAL MASTER: Okay. Let's make it the

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1 17th.

2 And to your point, the Robocopy scripted  
3 error out on files, I pointed out in the last hearing  
4 we're going to find out what the files are and then go  
5 from there.

6 Obviously, if they are PST, OST files, or  
7 anything of that nature, they are going to be -- we're  
8 going to need them. If they are .dat files or etc., I  
9 will reserve right to judgment. But any PST, OST,  
10 doc, Microsoft Office program, Kronos-based file, or  
11 the likes, similar such data, errored out, I expect  
12 you immediately to go back and grab it, manually if  
13 necessary.

14 We're updating the chain of custody; right?

15 MR. SCHAIBLEY: Yes.

16 THE SPECIAL MASTER: And we're calculating  
17 MD5 hash values this time around? You're going -- we  
18 already figured -- right? -- that we are going to get  
19 all the right evidence over.

20 I would like an explanation. If you could  
21 please go to your former forensic expert that was --  
22 you retained and try to figure out how he completely  
23 and totally missed two-thirds of your evidence.

24 I mean, you didn't know. I'm not -- counsel  
25 for UMC clearly had no knowledge or understanding --

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1       like you assumed you got -- he did his copying and he  
2       assumed the guy who showed up did the proper forensic  
3       imaging. And then counsel for UMC actually came in  
4       several months later, assumed that it was also  
5       correct, and they didn't know otherwise.

6               I'd like you to inquire, and if you would be  
7       so kind as to provide us a written response. If not,  
8       please advise him I will order him to appear.

9               What happens also with the script with the  
10       path, the filename and the copy, what if the path, the  
11       filename, is too long?

12              MR. SCHAIBLEY: I don't believe I've seen one  
13       that was too long that it errored for that specific  
14       reason, but I would have to go back through and check  
15       those specific errors to see if any of them were for a  
16       reason like that.

17              THE SPECIAL MASTER: All right. Voice mail,  
18       is there a person here today that knows the  
19       voice mail?

20              MR. LATTIN: I think it would be Susie  
21       Kisner.

22              MS. WITTY: Susie actually deferred on the  
23       voice mail issue.

24              THE SPECIAL MASTER: To Trina?

25              MR. LATTIN: No.

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1 MR. SCHAIBLEY: To Brett?

2 MS. WITTY: Yes.

3 THE SPECIAL MASTER: Brett who?

4 MR. SCHAIBLEY: Brett Johnson.

5 THE SPECIAL MASTER: Why don't you spell that  
6 for the record.

7 MR. SCHAIBLEY: B-r-e-t-t J-o-h-n-s-o-n.

8 THE SPECIAL MASTER: Can you have him submit  
9 a -- since he's not here, is he available to speak  
10 right now by phone?

11 MS. WITTY: He was not.

12 THE SPECIAL MASTER: Okay. So then get a dec  
13 affidavit from him explaining to me exactly how the  
14 phone systems work, how they back them up, do they  
15 send them to e-mail, what exactly -- how -- are they  
16 backed up?

17 MR. LATTIN: Not through our system, no, not  
18 through CommVault.

19 THE SPECIAL MASTER: So are they backed up  
20 separately and apart; if so, by who. And have him  
21 include as exhibits any relevant pieces of information  
22 there.

23 Let's go take a look -- the BlackBerry backup  
24 policy, we don't have that; right?

25 MS. WITTY: There isn't one.

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1 THE SPECIAL MASTER: Yes, there is no  
2 BlackBerry backup policy.

3 I'm going to request by the 13th that you  
4 circulate further clarification as to the use of the  
5 iPhone -- the search terms -- were you guys the ones  
6 responsible for providing them for the iPhone, iPad,  
7 whatever?

8 MS. WITTY: You should have received a -- did  
9 I not send that? It was just an e-mail that had the  
10 search terms in it.

11 THE SPECIAL MASTER: Did they get it too?

12 MS. WITTY: Should have.

13 THE SPECIAL MASTER: Did you guys receive it?

14 MR. GODINO: When did you send it?

15 MS. WITTY: It would have been --

16 MS. FOLEY: Half-hour ago?

17 MS. WITTY: No. It was Friday night.

18 THE SPECIAL MASTER: I didn't -- I don't  
19 think I got it.

20 MS. WITTY: I will re-send that.

21 THE SPECIAL MASTER: Okay. I need Plaintiff  
22 to review them if at all possible today and sign off  
23 on them.

24 MR. TOSTRUD: Okay.

25 THE SPECIAL MASTER: I haven't seen them, so

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1 as soon as I see them, I will add accordingly.

2 All right. Let's talk about custodian  
3 interviews. Someone mentioned Mr. Espinoza. Who was  
4 that? I forget. Was it you, Mr. Forrest?

5 MR. FORREST: I mentioned Mr. Spring and  
6 Ms. Myers. And actually I also have a comment about  
7 Panzeri when we get to it.

8 THE SPECIAL MASTER: All right. Really  
9 quickly, I also order plaintiffs to pull 10 of the  
10 packets that you were provided to look at the SAP  
11 correlation of data. When will you have, could you  
12 have that done?

13 MR. TOSTRUD: I think you gave us a date  
14 which may be by this Friday, but we are working on it.

15 THE SPECIAL MASTER: Okay. I just want to  
16 know -- so that's fine. Provide a written letter with  
17 the response and the validation, so I understand.

18 MR. TOSTRUD: Yes.

19 THE SPECIAL MASTER: It's in the transcript,  
20 page 81, if you need the record.

21 Okay. So let's go through the custodian  
22 interviews. Page 81 of the transcript covers the  
23 issue we just covered.

24 So who had a question? Panzeri, you said?

25 MR. FORREST: Yes. And this goes --



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1 THE SPECIAL MASTER: And, Plaintiffs, if you  
2 have any questions as well, feel free to --

3 MR. FORREST: And this goes to the Kronos SAP  
4 question, the completeness of the data that we have,  
5 and we'll check that with respect to the 10 packets.

6 THE SPECIAL MASTER: Randomly picked packets.

7 MR. FORREST: Randomly picked packets.

8 But I note in the description of the hard  
9 copies in Panzeri's custodian interview, she talks  
10 about pack rat because so much documentation is  
11 required for payroll/audit. And in essence, a large  
12 part of what we're doing is auditing the calculations  
13 with respect to the wages and hours recorded for the  
14 plaintiffs.

15 So that documentation may or may not be  
16 useful. We'll know shortly, I think.

17 And I will also note that --

18 THE SPECIAL MASTER: Well, what's the  
19 question?

20 MR. FORREST: Well, I guess the question is  
21 do we have enough data from -- just from Kronos to  
22 essentially recreate the documentation required for  
23 auditing, that the hours and payments were calculated  
24 correctly.

25 MS. FOLEY: Yes.

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1 MR. FORREST: And I don't know how we can do  
2 that without having access to the SAP data. We  
3 haven't --

4 THE SPECIAL MASTER: And we already had this  
5 conversation. You are verifying that and then getting  
6 back to me by Friday.

7 MR. FORREST: Okay.

8 THE SPECIAL MASTER: And then you are going  
9 to detail out what you would additionally need if it  
10 was not sufficient.

11 MR. FORREST: All right.

12 THE SPECIAL MASTER: No, I'm not saying you  
13 do or do not. I'm just saying we -- and once you can  
14 give me specific "I need X, Y, and Z or A, B, C data  
15 that is not provided in these packets," I can then  
16 have an educated conversation about it. But right now  
17 it's too esoteric.

18 MR. FORREST: Okay.

19 THE SPECIAL MASTER: I had a question about  
20 Ms. Panzeri's custodian interview, but do you have any  
21 others, Counsel, or any --

22 MR. FORREST: No.

23 THE SPECIAL MASTER: From Plaintiff?

24 MR. GODINO: No.

25 Hold on. I think we would like, since we got

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1 the interviews last night at 8:00 p.m., we really  
2 haven't a full --

3 THE SPECIAL MASTER: Chance to look at them?

4 MR. GODINO: -- opportunity to look at it.  
5 So I think maybe at the next hearing we would have a  
6 lot more questions on them.

7 THE SPECIAL MASTER: We'll make it a phone  
8 hearing and --

9 MS. WITTY: I was going to say, if we could  
10 do that --

11 THE SPECIAL MASTER: We'll do it as a phone  
12 hearing, and we'll set hearing dates at the end, and  
13 you'll -- but I will request that you circulate a  
14 written bulleted list for each custodian. So the  
15 whole idea is to get the questions answered, not do  
16 anything else.

17 Now, my question is, it says "created our own  
18 distribution list for timekeepers." I'm a little  
19 confused.

20 MS. WITTY: So essentially, what we've done  
21 in this case to include everyone on e-mails, when  
22 something is sent to all counsel, you know, it lists  
23 out all the separate e-mails. She essentially does  
24 that for her timekeepers.

25 THE SPECIAL MASTER: She doesn't mean a

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1 distribution list per se at an Exchange level?

2 MS. WITTY: Exactly. I can --

3 THE SPECIAL MASTER: Mr. Schaibley, she  
4 didn't actually request for you to do that; right?

5 MR. SCHAIBLEY: I don't recall creating a  
6 distribution list for her, no.

7 THE SPECIAL MASTER: All right. Just  
8 checking. So can you just double-check, yourself, to  
9 make sure? She says a, quote, "distribution list for  
10 timekeepers."

11 Now, let's go over the webmail question that  
12 came up earlier. You can access e-mail through the  
13 Outlook Web client; no?

14 MR. SCHAIBLEY: Correct.

15 THE SPECIAL MASTER: And it's just going to a  
16 URL and putting in a login and a password; right?

17 MR. SCHAIBLEY: Yes.

18 THE SPECIAL MASTER: So when she says  
19 "webmail," she says "webmail," what is she referring  
20 to there?

21 MR. SCHAIBLEY: I can only assume she's  
22 referring to the UMC Outlook webmail.

23 THE SPECIAL MASTER: Okay. So that's what  
24 she's doing. Which she can access from her phone or  
25 from any device?

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1 MR. SCHAIBLEY: Correct.

2 THE SPECIAL MASTER: It doesn't --

3 MR. SCHAIBLEY: I'm sorry, did you say can or  
4 can't?

5 THE SPECIAL MASTER: Can, c-a-n.

6 Counsel for Plaintiffs, does anybody have any  
7 questions beyond the ones I've asked?

8 We can then go to Mr. Espinoza. Do  
9 Plaintiffs have any questions about his custodian  
10 interview that they would like further clarification  
11 around?

12 MR. TOSTRUD: Can you give us just one minute  
13 to confer?

14 THE SPECIAL MASTER: Yes, sure. Off the  
15 record.

16 (OFF RECORD.)

17 THE SPECIAL MASTER: Back on the record?

18 MR. TOSTRUD: Back on the record.

19 With respect to the custodian interviews, we  
20 will just reserve until the next hearing and get you a  
21 list.

22 THE SPECIAL MASTER: Okay. I have them.  
23 Okay. Well, we can table them then to the next  
24 hearing, if you want, my questions as well.

25 I do have three that I do want to understand

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1 just because we have the IT people here.

2 It says "But it is duplicate" and "is  
3 discarded weekly." "He has a weekly calendar" --  
4 "calendar printed off," and then it says, "But it is a  
5 duplicate of Outlook and it is discarded weekly."

6 Any clarification? What does he use it for?

7 MS. WITTY: To keep on his desk. There was  
8 a --

9 THE SPECIAL MASTER: Can you get an affidavit  
10 from him explaining what he actually uses the paper  
11 copy for?

12 MS. WITTY: Yes.

13 THE SPECIAL MASTER: My simple concern is  
14 that he uses it, updates it, and doesn't get included  
15 in his electronic file.

16 MS. WITTY: This is an example of his --

17 THE SPECIAL MASTER: Oh, yes, it was  
18 provided.

19 MS. WITTY: It was provided in the blue tab  
20 in Mr. Espinoza's. This is literally a scanned copy  
21 of what was printed by Claudette Myers for John  
22 Espinoza. You'll notice that it has a smiley face  
23 down in the bottom corner for Friday. This is  
24 literally what she prints out and is --

25 THE SPECIAL MASTER: Okay.

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1 MR. GODINO: The question is whether he --

2 you know, he makes handwritten notes on --

3 THE SPECIAL MASTER: I mean, that's --

4 MS. WITTY: You mean --

5 (Inaudible due to multiple colloquy.)

6 MS. WITTY: -- that's the information we'd

7 like clarified.

8 THE SPECIAL MASTER: Okay. So I want that in  
9 an affidavit from Mr. Espinoza. I want him to explain  
10 does he use it for taking notes, does he use it for  
11 tracking his -- I mean, look, I joke with people --  
12 this is my mini iPad (indicating).

13 I actually appreciate writing things down and  
14 the value of just having it in your hands.

15 MR. GODINO: I guess we might want to know if  
16 he's shredding anything.

17 THE SPECIAL MASTER: If he's shredding it?

18 MR. TOSTRUD: Anything.

19 MR. GODINO: Anything else besides those that  
20 they mentioned at the last hearing, that he was  
21 possibly shredding those.

22 THE SPECIAL MASTER: Well, going forward he's  
23 not shredding them, but in his affidavit just explain  
24 what he does with them and what he's done with them,  
25 be it shred, burn --

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1 MR. GODINO: And what type of documents he  
2 felt he could shred despite the preservation and  
3 litigation hold.

4 THE SPECIAL MASTER: Let's go off the record.

5 (OFF RECORD.)

6 THE SPECIAL MASTER: On the record?

7 MS. WITTY: Yes, on the record.

8 Regarding asking a representative of UMC a  
9 question, I feel very hesitant to record my  
10 communications with my client.

11 THE SPECIAL MASTER: Fine. I understand  
12 that. Have him here for the next time we have a  
13 hearing. He can answer it to me.

14 MS. WITTY: I'd also request -- we'll address  
15 the concerns for the printed calendar and any other  
16 documentation in an affidavit. Mr. Espinoza happens  
17 to be on vacation this week. If --

18 THE SPECIAL MASTER: If you're not  
19 comfortable at any point, I'm more than happy to have  
20 him appear before me, and I'll ask him the question.

21 MS. WITTY: No, I was just saying I would --  
22 I would like to have additional time, because I know  
23 he will not be here this week.

24 THE SPECIAL MASTER: That's fine.

25 MS. WITTY: So I can't have him sign



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1 anything.

2 MR. TOSTRUD: Okay. I just want to make  
3 sure you -- Plaintiffs would like him at the next  
4 hearing, if possible, and I think you've requested --

5 THE SPECIAL MASTER: He is going to be at the  
6 next hearing.

7 MR. TOSTRUD: Okay.

8 THE SPECIAL MASTER: I did -- I did want to  
9 understand two other things here. Where was it? When  
10 he says, "His outlook Auto-deletes spam" -- this is  
11 for you -- "gets a lot of diet plans and fake hospital  
12 newsletters," is that using the McAfee again on the  
13 back side, to do that, or how does that  
14 automatically --

15 MR. SCHAIBLEY: I honestly don't know what he  
16 is referring to, because any spam that makes it into a  
17 user's inbox would be -- it would be incumbent upon  
18 that individual to delete themselves. We do, with the  
19 mail filters, stop the majority of spam coming into  
20 our network, but obviously --

21 THE SPECIAL MASTER: That's how I understood  
22 mail filtering to work, so that's why I was a little  
23 confused.

24 MR. SCHAIBLEY: We do stop the majority of  
25 it, but some things obviously do get through.

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1 THE SPECIAL MASTER: All right. So Counsel  
2 for UMC, can you please sit down with him and  
3 Mr. Schaibley and just figure out -- make sure the  
4 mail filtering is what he's talking about, because I'm  
5 not clear.

6 Is there different login information for TS  
7 Web?

8 MR. SCHAIBLEY: What do you mean "different  
9 login information"?

10 THE SPECIAL MASTER: He says "can't remember  
11 his login information."

12 MR. SCHAIBLEY: This is for Mr. Espinoza?

13 THE SPECIAL MASTER: Yes, on the last page.

14 MR. SCHAIBLEY: The only thing I can surmise  
15 from that is that he doesn't remember the URL. The  
16 login --

17 THE SPECIAL MASTER: Okay. So there's no  
18 separate credentialing systems?

19 MR. SCHAIBLEY: No. The login is his Active  
20 Directory credentials.

21 THE SPECIAL MASTER: Okay. Fine.

22 Counsel, I did read the responses around the  
23 discs in the further clarification. I'm going to  
24 order you to preserve any discs that he did indeed  
25 create during the time period in question --

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1 MS. WITTY: Okay.

2 THE SPECIAL MASTER: -- and preserve them  
3 accordingly, because --

4 MS. WITTY: When you say "he created"...

5 THE SPECIAL MASTER: Or Claudia (sic).

6 MS. WITTY: Okay. That's what I wanted to  
7 make sure was clear.

8 THE SPECIAL MASTER: I recognize Claudia was  
9 the creator at his direction.

10 MS. WITTY: I'm aware that from -- just for  
11 clarification -- and Plaintiffs' Counsel, I'd asked  
12 you to assist, it was -- we were looking at the time  
13 period from, was it June or January of 2008 to  
14 current? I can't remember what was in the  
15 preservation letter.

16 MR. TOSTRUD: In the preservation letter, I  
17 believe it was June 2008. It was not January.

18 MS. WITTY: That's the time period that we  
19 will...

20 THE SPECIAL MASTER: Does UMC have in-house  
21 counsel?

22 MS. FOLEY: They have counsel representatives  
23 from the D.A.'s office and an in-house --

24 THE SPECIAL MASTER: Are they actively  
25 involved in this matter?

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1 MS. FOLEY: To some degree.

2 THE SPECIAL MASTER: Would they be the ones  
3 internally issuing the litigation hold?

4 Are we on the record here? I hope so.

5 THE REPORTER: Yes.

6 THE SPECIAL MASTER: Would they internal --  
7 like, what I'm trying to understand is, you send your  
8 client a litigation hold notice.

9 MS. WITTY: Yes.

10 THE SPECIAL MASTER: Who then sends it out  
11 for UMC internally?

12 MS. WITTY: It would come -- with regards to  
13 UMC, with the preservation letter that was sent, how  
14 that was delineated, or --

15 THE SPECIAL MASTER: I'm talking about  
16 litigation -- no, no. Preservation letter, fine, but  
17 also just on the going-forward request that I'm making  
18 that they receive these copies; is it going directly  
19 from you to in-house counsel, or directly from you to  
20 the IT individuals?

21 MS. WITTY: With regard to the ones that we  
22 have discussed today, those will come directly from  
23 counsel to those individuals. In the past, I believe  
24 it went from counsel to the CEO, and from the CEO out.

25 THE SPECIAL MASTER: Okay. I'd like a list

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1 as to who they went out to.

2 Mr. Pixley, I had a question for you around  
3 the BlackBerry issue. Did you have any ideas or  
4 thoughts around BlackBerry materials about how we  
5 could maybe alternatively obtain that data?

6 MR. PIXLEY: (Shakes head side to side.)

7 THE SPECIAL MASTER: I thought I would check,  
8 because the only other alternative is that I subpoena  
9 Sprint, because Sprint will have it. And it's very  
10 clear to me that -- I mean, can you please draft up  
11 subpoenas to Sprint for at least the seven key  
12 custodian -- whoever has got a BlackBerry, and send  
13 Sprint a litigation hold letter for those three  
14 custodians?

15 MS. WITTY: Just for preservation's sake, do  
16 you mind if we include anyone we --

17 THE SPECIAL MASTER: Include all 26 folks and  
18 then subpoena it as well for me, and I'll execute the  
19 subpoena.

20 MR. PIXLEY: I'm still curious about the  
21 rules, if they are going to pull up how the  
22 BlackBerry --

23 THE SPECIAL MASTER: Oh, yes, thank you.  
24 Preservation -- the rules, we mentioned before lunch  
25 that there is this huge manual. I'd like to know the

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1 exact policies from the huge manual from UMC counsel  
2 as to the preservation policies that govern for all  
3 data. And I'll be specific: E-mail, mobile, Office  
4 documents. I don't want to know about your patient  
5 records. I want to know about human resource records,  
6 and I want to know within the policies, whatever they  
7 may be, County or otherwise, I'd like them provided to  
8 me and plaintiffs' counsel, I guess, as well, what  
9 they are.

10 MS. WITTY: Just to clarify, e-mail, mobile  
11 devices, HR --

12 THE SPECIAL MASTER: Well, anything relating  
13 to a technology system, data system, minus anything  
14 relating to patient records, meaning people that they  
15 treat in their hospitals.

16 And let me put a date next to that. Let's  
17 make that the 21st.

18 Now, with the personal laptop devices, I  
19 wanted to go over -- he does not -- Mr. Espinoza, does  
20 he or does he not have a personal laptop that he has  
21 used in connection with his work?

22 MS. WITTY: Does not.

23 THE SPECIAL MASTER: Okay. Who does?

24 MS. WITTY: The two individuals that  
25 mentioned using a laptop were Doug Spring and James

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1 Mumford. James Mumford used his personal laptop, and  
2 Doug Spring had one that was UMC issued.

3 THE SPECIAL MASTER: So I'm ordering both of  
4 them to provide their laptops to UMC counsel for  
5 duplicate images to be created.

6 MS. WITTY: And the other one -- and we will  
7 obviously make an image of it as well, the  
8 administrative office, which is where the chief human  
9 resources officer -- officer is --

10 THE SPECIAL MASTER: That's Claudette's.

11 MS. WITTY: -- and Claudette's, she uses the  
12 administrative laptop for Skype interviews.

13 THE SPECIAL MASTER: But nothing else?

14 MS. WITTY: But nothing else.

15 THE SPECIAL MASTER: Let's just make a copy  
16 of it, to be on the safe side.

17 If you can produce to me the policies that  
18 governs said laptop, I'm amenable to not; but at this  
19 stage of the game, I'm just going to order it.

20 Is that laptop on UMC's network?

21 MR. SCHAIBLEY: The Skype one that Claudette  
22 is using? More than likely, yes.

23 THE SPECIAL MASTER: So then make a copy.

24 Okay. Department of Labor.

25 Before we touch on the Department of Labor

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1 piece, mailing lists, did we set a date for when we  
2 were going to try to figure that out, for the mailing  
3 lists?

4 MS. WITTY: Could you repeat that?

5 THE SPECIAL MASTER: We had distribution  
6 lists that weren't really distributions lists, and  
7 then we had dynamic, which were --

8 MS. WITTY: Yes.

9 THE SPECIAL MASTER: -- but they were not  
10 actually listservs; they were Exchange based --

11 MR. SCHAIBLEY: Correct, we don't have any  
12 listservs.

13 THE SPECIAL MASTER: And we don't have any  
14 backups, because they only go back four months. Do we  
15 have a solution that you can suggest or recommend?

16 Mr. Pixley and Mr. Forrest, did you guys hear  
17 as well that issue?

18 MR. PIXLEY: The distribution list?

19 THE SPECIAL MASTER: Yes. There is no actual  
20 mailing mail list. There's just --

21 MR. PIXLEY: It's not an independent mailbox.  
22 It's a group list, is the way I understood it during  
23 the phone call.

24 MR. SCHAIBLEY: Correct.

25 MR. FORREST: Per their Exchange, their



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1 Exchange groups.

2 THE SPECIAL MASTER: Any idea how -- and  
3 those were not collected? Which would be, just for  
4 context, would be a group list -- just so I get it,  
5 would be UMCPost.

6 MR. SCHAIBLEY: Well, I just want to  
7 understand what your -- what your definition of a  
8 "group list" is, because none of the lists that we  
9 maintain and use are independent repositories.

10 THE SPECIAL MASTER: But there needed to be  
11 collected at some point the communicate- -- whoever is  
12 sending -- there's only authorized users that probably  
13 can send on that list.

14 MR. SCHAIBLEY: Yes.

15 THE SPECIAL MASTER: Okay. So whoever the  
16 authorized senders are. I mean, I don't know how else  
17 to pull those, but clearly if they are used to  
18 communicate around HR policies relating to the  
19 company, that they would be a necessity to preserve.

20 MR. PIXLEY: My understanding is your request  
21 was that you were asking for a list of the people who  
22 were members of those.

23 THE SPECIAL MASTER: Yes, I did request that.

24 MR. PIXLEY: And those people may still have  
25 communications that was deleted by somebody else.

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1 THE SPECIAL MASTER: Yes, exact -- what I'm  
2 basically trying to get at is, you had these lists,  
3 and because they weren't collected at the time in  
4 2013, in August or in April --

5 MS. FOLEY: These are the share files?

6 THE SPECIAL MASTER: No, the lists, the  
7 mailing lists, the UMCPPost, like, lists, for lack of a  
8 better term, given the nomenclature at UMC.

9 Obviously we need to make sure we have a  
10 complete -- certainly for the HR lists, a  
11 complete-as-possible snapshot.

12 So what I ask is give me a list of the people  
13 that are authorized to send, and maybe we'll come up  
14 with a search protocol where you can search just their  
15 mailboxes for a subject line or however the list is  
16 configured to see if they have any e-mails that were  
17 sent from them to that list.

18 And then, Counsel for UMC, I need you to  
19 compile a spreadsheet of what the different lists  
20 actually are.

21 Actually would be great is the name of the  
22 list and who is authorized to send on that list. So,  
23 for example, UMCPPost has whoever is authorized --  
24 during the time period in question, not today.

25 MS. FOLEY: Right. Sorry. What was your

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1 example? Your example was someone who'd send --  
2 UMCPost.

3 THE SPECIAL MASTER: Yes, just as an example.  
4 And then but your -- the custodian interviews  
5 identified four or five other lists.

6 MS. FOLEY: Okay.

7 THE SPECIAL MASTER: I can -- where are  
8 they? Anybody remember any of the other list names?  
9 In the custodian interviews, there is a list. I can't  
10 remember where they are, but they reference at least  
11 four different lists.

12 MS. FOLEY: Okay.

13 THE SPECIAL MASTER: We are going to take a  
14 break for five minutes. I'm kidding. At 3:10 we can  
15 meet back here.

16 (RECESS TAKEN 3:00 P.M. To 3:22 P.M.)

17 (Cayla Witty, Esq., not present.)

18 THE SPECIAL MASTER: With Ms. Panzeri and the  
19 SAP piece, something tells me that, Mr. Clark, you may  
20 be able to answer some questions I have.

21 How familiar are you with the SAP on the UAX?

22 MR. CLARK: I'm not familiar with the  
23 application itself. I'm just familiar with the file  
24 transfer from UMC to go to the County and coming back  
25 and --

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1                   THE SPECIAL MASTER: Who within UMC itself --  
2                   because what I was just simply trying to figure out  
3                   is, from -- what data for SAP sits within your  
4                   universe? Because the script, to be clear, one thing  
5                   about the script beyond the network file shares that  
6                   we are going to need to collect is obviously data from  
7                   third-party -- not third -- data from applications  
8                   that the custodians were using that you guys have.

9                   For instance, if SAP was -- or maybe that's a  
10                  bad example.

11                  For instance, let's say internal -- I don't  
12                  have a list of the applications that you run  
13                  internally, but I assume you have an intranet. Right?  
14                  And your intranet keeps information on it.

15                  I don't think the script pulled from the  
16                  intranet and pulled the data off the intranet as to  
17                  the policy like what would be the relevant  
18                  communications, as I understood it. According to what  
19                  I assume, Mr. Schaibley, the script doesn't pull from  
20                  the Internet?

21                  MR. SCHAIBLEY: No, it does not.

22                  THE SPECIAL MASTER: All right. So backup,  
23                  grab me a snapshot from four months ago, the intranet,  
24                  or as far back as you can go.

25                  MR. LATTIN: Okay.

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1 MS. FOLEY: And that should get us the  
2 policies, maybe, we're hoping.

3 THE SPECIAL MASTER: Well, we're getting  
4 there. We're getting there in a second.

5 So what I'm trying to understand is, the SAP  
6 particularly and the intranet, we need to identify the  
7 third -- the internal applications that individual  
8 custodians access that they don't have within their  
9 user profile where the data is stored. They might  
10 upload documents.

11 I don't know what they do on your intranet,  
12 but I know on SAP, they put data into something, and  
13 that data then goes from you to SAP at the County  
14 level, and then they get data back, and it's got to  
15 store data somewhere that it receives back. And I'm  
16 assuming that the custodian profile doesn't have the  
17 data that they get back from the County.

18 I could be -- it might not be relevant. I  
19 don't know because I don't have a -- I don't know the  
20 data flow, so to speak. But what I just want to make  
21 sure is that you are preserving the SAP data itself  
22 that you are using or receiving back. Does that --

23 MR. CLARK: My understanding is on that  
24 server that you asked about, AIX --

25 THE SPECIAL MASTER: With the seven years.

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1           MR. CLARK: -- it -- the AIX server, we call  
2           it ERP E01, it sends data out and receives data,  
3           everything that goes out and in is archived  
4           automatically.

5           THE SPECIAL MASTER: And it's for seven  
6           years?

7           MR. CLARK: Yes. Longer too if it has to.

8           MS. FOLEY: And that's where the SAP is?

9           THE SPECIAL MASTER: That's where the data --

10          MS. FOLEY: That's where the SAP goes out?

11          MR. CLARK: That's the data feed.

12          THE SPECIAL MASTER: Right. That's what -- I  
13          just want to make sure of the data feed, because when  
14          I look at the script and it goes to her profile, it  
15          doesn't look like it actually has access to the data  
16          feeds that are going back and forth.

17                 I'm not saying it has necessarily useful data  
18          in it, but based on the already zealous advocacy that  
19          has transpired around the SAP and the packets and  
20          etc., I just simply want to make sure that a copy of  
21          the SAP data stream that gets back is being preserved,  
22          and that was what...

23                 So as you understand it, it comes back and  
24          forth and it's archived immediately.

25          MR. CLARK: One, there is a .done file that

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1 gets archived after 30 days. Once a month everything  
2 gets archived. So because if you have somebody calls  
3 you up that's working in an application, we call them  
4 senior analysts, ERP analysts, and they say, "I need  
5 the files sent on that day we sent." So we have to  
6 coordinate with the County to re-send files if  
7 necessary.

8 THE SPECIAL MASTER: I get it. So then  
9 you're storing that on the AIX box?

10 MR. CLARK: Uh-huh. It's just an in and out.

11 THE SPECIAL MASTER: Yes, it's a dumb -- but  
12 you're just -- it's a -- whatever. It's a flat text  
13 file?

14 MR. CLARK: It's a flat text file.

15 THE SPECIAL MASTER: Yes, that's a UNIX file.  
16 So it's a UNIX flat text file that just has the data  
17 that was sent that day or received that day?

18 MR. CLARK: Right.

19 THE SPECIAL MASTER: So then it's being  
20 preserved. That was just a question I had.

21 So then you might, Counsel, once we get their  
22 SAP data results, that might be an important place to  
23 be mindful of --

24 MS. FOLEY: Okay.

25 THE SPECIAL MASTER: -- because it does go

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1 all the way back.

2 Okay. That takes care of that.

3 And Ms. Panzeri then runs reporting  
4 solutions, has a client software. Just so I get it,  
5 she has a client software and four people that work on  
6 her team that interact with the SAP system, but they  
7 are using a client-based application?

8 MR. CLARK: I'm not really sure, but we could  
9 find out.

10 THE SPECIAL MASTER: Well, that's what she  
11 says in her custodian interview.

12 MS. FOLEY: Yes, nothing --

13 THE SPECIAL MASTER: I'm just trying to make  
14 sure that the script that was -- like, if this is  
15 about payroll and pay records, right, and the packets  
16 aren't sufficient -- and I don't want to say they are  
17 or not, I offer no opinion on that at all -- but what  
18 I do want to make sure is that the system Ms. Panzeri  
19 is using is the same SAP -- the right SAP client and  
20 the data are the same. There's not two SAP  
21 applications here we're talking about?

22 MR. SCHAIBLEY: Not that I know of.

23 THE SPECIAL MASTER: Certainly not to my  
24 knowledge, so I'm asking you guys --

25 MR. CLARK: I think there's only one, but we



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1       could check.

2               THE SPECIAL MASTER: Just double-check. I  
3       just want to make sure that what is sitting on her  
4       machine is the client-based software, is the same data  
5       that you are getting and receiving from the County on  
6       a regular basis. I just want to dot my Is and cross  
7       my Ts. Right? I mean, there's no question it's  
8       preserved. I just don't want there to be another  
9       application and we have to revisit this area.

10              With regards to the USB reporting, I just  
11       want to be clear what I'm expecting. They generate a  
12       log; right? It says, "This device was connected to  
13       this by this user"; right?

14              MR. SCHAIBLEY: Yes.

15              THE SPECIAL MASTER: And I just want the log  
16       files.

17              MR. SCHAIBLEY: Yes.

18              THE SPECIAL MASTER: You can do detailed log,  
19       that's what I want. There will be two or three  
20       options. The most detailed, the better. The more the  
21       detail, the better, for the log.

22              MR. SCHAIBLEY: The log files are contained  
23       within the antivirus database that we use. It's not  
24       like on the local machines.

25              THE SPECIAL MASTER: No, I know. But you

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1 have a client to access the log?

2 MR. SCHAIBLEY: Yes.

3 THE SPECIAL MASTER: Yes. So what I'm saying  
4 is, when you access that, I want things -- I don't  
5 want the -- I don't want the high-level report. I  
6 want the detailed report. For Doug Spring, I want to  
7 know that these devices were connected on this day  
8 from this IP address. Whatever it is recording, the  
9 more detail it can give me, the better.

10 Does that make sense?

11 MR. SCHAIBLEY: Yes.

12 THE SPECIAL MASTER: Now, with Iron Mountain,  
13 we'll wait until Ms. Witty comes back, just because --

14 MS. FOLEY: Yes.

15 THE SPECIAL MASTER: So do you want to wait  
16 for Ms. Witty to return to talk about the Department  
17 of Labor? I'm okay waiting.

18 MS. FOLEY: Yes.

19 THE SPECIAL MASTER: I want to be  
20 crystal-clear about my production date. It won't  
21 move. That rolling production date is set in stone.  
22 If you cannot get that data done by that date, I will  
23 appoint someone that can come in and do it. Because  
24 it shouldn't take you more than 72 hours to get it  
25 done right. So if you can't do it, I'm going to

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1       appoint someone to come in and get it done. Because  
2       one way or the other, counsel is going to get it, it's  
3       going to be in a review log file, and that's how that  
4       will be.

5               Is there any confusion here?

6               MR. EDMONDSON: No.

7               THE SPECIAL MASTER: Because it's very  
8       important to me that we start making progress.

9               MS. FOLEY: Right.

10              THE SPECIAL MASTER: And if we can't make it,  
11       I will resort to alternative resources.

12              Then the remaining issue -- I have a feeling  
13       you'll want Ms. Witty here as well -- IT -- but on  
14       page 142 of the transcript, we were going to check  
15       with the IT help desk for the IT ticketing system to  
16       see how far back it went, because they were involved  
17       with the Iron Mountain piece.

18              MR. SCHABLEY: I have that date for you.

19              THE SPECIAL MASTER: And if they have a log  
20       of the Iron -- because they were involved in it;  
21       right?

22              MR. SCHABLEY: The system goes back to  
23       April 29th of 2013.

24              THE SPECIAL MASTER: Nothing gets to be easy.  
25       Counsel, can you reach out to Iron Mountain

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1 via UMC and get a written -- I'm going to order, or I  
2 can subpoena if necessary but request first, the Iron  
3 Mountain logs. Iron Mountain keeps a log because they  
4 charge you.

5 MR. SCHAIBLEY: I need to correct that date.  
6 I was looking at the wrong thing. It is April 13th,  
7 2012.

8 THE SPECIAL MASTER: So can you please create  
9 a report, provide it to counsel, around the burning of  
10 the scanning of the disc thing. At our prior hearing  
11 it was established that they went to IT help desk to  
12 get a DVD burned. And so whatever requests you have  
13 as of April 13th, 2012, forward till to date, relevant  
14 to the custodians, please provide it to counsel. The  
15 more detail, the better, and counsel can parse it down  
16 accordingly.

17 Does that make sense?

18 MS. FOLEY: Yes.

19 THE SPECIAL MASTER: All right. Let me put a  
20 date next to that. I know that we're piling it on.

21 April 22nd.

22 MR. SCHAIBLEY: April 13th.

23 THE SPECIAL MASTER: No, I'm telling you when  
24 I want that list.

25 MR. SCHAIBLEY: Oh, I'm sorry.

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1 THE SPECIAL MASTER: The list, obviously, is  
2 any IT requests that they received to have a DVD or CD  
3 burned by any of the custodians of interest.

4 Do plaintiffs have any questions or comments  
5 with regards to what we've been discussing?

6 We'll touch on Department of Labor when  
7 Ms. Witty is back.

8 MR. TOSTRUD: May I approach?

9 THE SPECIAL MASTER: Does it have to do with  
10 the Department of Labor?

11 MR. TOSTRUD: No. You had previously  
12 requested a list of the search terms.

13 THE SPECIAL MASTER: Yes.

14 MR. TOSTRUD: Okay. So it's contained at  
15 page 4 of the joint status report. It's at the  
16 bottom.

17 THE SPECIAL MASTER: This was it, what was  
18 agreed upon? Because I read this.

19 MR. TOSTRUD: Yes.

20 Correct?

21 THE SPECIAL MASTER: Perfect.

22 MS. FOLEY: I'm sorry. I don't see it.

23 THE SPECIAL MASTER: So here's what I want.  
24 I want -- before you run the EnCase, I just want a  
25 list of the search terms.

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1 MR. TOSTRUD: We included them.

2 THE SPECIAL MASTER: Is this what everybody  
3 agreed upon (indicating)?

4 MS. FOLEY: Yes.

5 MR. TOSTRUD: There was no modification to  
6 that, right, Margaret?

7 MS. FOLEY: I don't think so.

8 MR. TOSTRUD: I don't think so either.

9 MS. FOLEY: There could have been something  
10 small that was tweaked, but I don't think so.

11 THE SPECIAL MASTER: Okay. Well, here's  
12 what -- we're going to modify it when we, I think,  
13 modified it to add a bunch of iPhone and iPad search  
14 terms --

15 MS. FOLEY: Oh, right, right, right.

16 THE SPECIAL MASTER: -- that counsel provided  
17 us. So here's what I want. Can I enter this?

18 MR. TOSTRUD: Of course.

19 THE SPECIAL MASTER: Page 4 of this  
20 exhibit -- here we go.

21 MR. TOSTRUD: Why don't I give you all the  
22 pages so it's a complete document (handed).

23 (Exhibit 11 was marked for identification  
24 by the Certified Court Reporter.)

25 THE SPECIAL MASTER: And we're just going to

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1 go off the record.

2 (OFF RECORD.)

3 (Cayla Witty now present.)

4 THE SPECIAL MASTER: I want to just -- there  
5 are a couple of things before we get to the Department  
6 of Labor that I would like to touch on.

7 Now, we have determined that the original set  
8 of data that Mr. Edmondson was looking at was not the  
9 complete set of data, I would like to request, given  
10 that the document requests that counsel from UMC has  
11 already responded to, that they not redo it but simply  
12 revisit the document requests that have already come  
13 in from Plaintiffs against the full, entire universe  
14 of the data that was collected.

15 MS. FOLEY: And give an updated response?

16 THE SPECIAL MASTER: Yes, and update your  
17 responses accordingly.

18 Because, for instance, like, you actually  
19 haven't had a chance to look at the intranet data  
20 because it hasn't been collected. So theoretically,  
21 there might be no policies because they only sit on  
22 the intranet, just as a hypothetical example. So --  
23 and I'm sure that you would happily turn them over if  
24 they had actually been in the data that --

25 MS. FOLEY: Right.

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1                   THE SPECIAL MASTER: -- you had. So I'm not  
2                   going to dictate or determine what search terms I need  
3                   you to run for that or how you do it, but what I do  
4                   want to happen is you to revisit the document requests  
5                   that you have received as the collection from the  
6                   client is further supplemented and perfected, because  
7                   I firmly believe that if policies were indeed  
8                   collected -- requested and they exist largely on the  
9                   intranet, and the intranet was never collected or  
10                  provided to UMC's counsel for searching or reviewing,  
11                  that you probably will need to supplement your  
12                  response.

13                 I'm going to let you make your own best  
14                 judgment, and I will make a determination at a later  
15                 date if there are any issues with it.

16                 My whole point being is that I recognize that  
17                 UMC counsel wasn't even involved at the time, that  
18                 they assume the collection had been done properly.

19                 But irrespective of how we ended up here,  
20                 what I do know for a fact is that whatever you were  
21                 looking at still doesn't contain the intranet, doesn't  
22                 contain the network file shares, and doesn't contain,  
23                 more or less, a large percentage of the data your  
24                 client originally collected. So I firmly believe that  
25                 you probably will end up supplementing your document



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1 production.

2 Does plaintiff have any objection to that?

3 MR. TOSTRUD: No.

4 THE SPECIAL MASTER: And as that happens and  
5 occurs, we will then -- if there are major gaps or  
6 etc., downstream, we will address them, but I don't  
7 foresee there being any.

8 I just -- I think that once you have the  
9 ability to have all of the data before you and run  
10 searches or however you want to do it, and we'll see.

11 MR. TOSTRUD: We would expect that the  
12 interrogatory responses would also be amended.

13 THE SPECIAL MASTER: Whenever the request for  
14 data came across. Here's my --

15 MS. WITTY: Just to clarify: I think,  
16 underneath the Federal Rules, there is the contingent  
17 application to supplement discovery. We will just  
18 approach it with that type of perspective, but is  
19 complete.

20 THE SPECIAL MASTER: Yes, I know. Wait.  
21 Stop. Off the record.

22 (OFF RECORD.)

23 THE SPECIAL MASTER: Back on the record.

24 So to be clear, I am ordering UMC to  
25 supplement all of its production, be it in whatever

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1 form as required under the Rules, as it receives the  
2 additional information from their client.

3 Once it's done and production has been  
4 supplement and completed, we will, if necessary,  
5 revisit that.

6 Plaintiffs, any questions or comments?

7 MR. TOSTRUD: That's fine.

8 THE SPECIAL MASTER: UMC, any questions or  
9 comments?

10 MS. WITTY: (Shakes head side to side.)

11 MS. FOLEY: No.

12 THE SPECIAL MASTER: Perfect.

13 Now, I want to just touch on the intranet  
14 because it is fairly -- it is an IIS server, if my  
15 memory serves me right. Is it a virtualized?

16 MR. CLARK: No, it's physical.

17 THE SPECIAL MASTER: Physical, perfect. Even  
18 better.

19 What's the backup policy on that?

20 MR. CLARK: We have it (inaudible).

21 (Reporter requesting clarification.)

22 THE SPECIAL MASTER: He has it right there.  
23 They're looking (to reporter).

24 MR. LATTIN: The policies and procedures that  
25 are located on there?

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1 THE SPECIAL MASTER: I want the backup for  
2 the entire intranet, and then I want -- I want to know  
3 the entire intranet. Let me be crystal-clear:

4 If there are policies and procedures stored  
5 on the intranet, I would strongly encourage that you  
6 collect those and provide them to UMC's counsel  
7 immediately; and if there are any archives of prior  
8 procedures or protocols, that they also be collected  
9 and provided.

10 Basically any data sitting on your intranet  
11 that is a policy, practice, procedure, or anything,  
12 really, that should be collected and then searched.

13 Actually, just take a copy of the -- how big  
14 is the intranet?

15 MR. LATTIN: How big is that server?

16 THE SPECIAL MASTER: Of live data.

17 MR. CLARK: I don't recall. I'd have to go  
18 look at it, but not very big.

19 THE SPECIAL MASTER: All right. And what  
20 about archived data sitting on it? How about this:  
21 Any active data, any active file sitting on the  
22 intranet server, I want just a copy made.

23 MR. LATTIN: Okay.

24 THE SPECIAL MASTER: Counsel for Plaintiffs,  
25 do you have any -- and then I want it provided and

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1 searched with hash, chain of custody, and the whole  
2 nine yards.

3 Counsel, Plaintiffs? Any specific -- do you  
4 need a bit-level copy, or is it logical or...

5 MR. PIXLEY: I think the logical copy of  
6 those files would be fine. I would preserve it in L01  
7 file, but --

8 THE SPECIAL MASTER: Can we do that? You  
9 guys have EnCase, right, UMC?

10 MR. SCHAIBLEY: Yes.

11 THE SPECIAL MASTER: So can you do that? Did  
12 you hear the request?

13 MR. SCHAIBLEY: I'm sorry. I didn't hear  
14 what he said.

15 THE SPECIAL MASTER: One more time,  
16 Mr. Pixley.

17 MR. PIXLEY: We would just do a targeted  
18 collection. I don't see the need to do a physical  
19 image of that server. Just do a targeted collection  
20 and preserve those files in a logical evidence file.

21 THE SPECIAL MASTER: Any questions?

22 MR. SCHAIBLEY: No.

23 THE SPECIAL MASTER: Counsel, is that  
24 all right for you?

25 MS. FOLEY: Is that doable?

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1 MS. WITTY: My only concern is the search  
2 terms.

3 THE SPECIAL MASTER: No, no. Search terms  
4 are staying as you have agreed in your -- oh, you  
5 weren't here. We entered into evidence the 12 search  
6 terms.

7 MS. WITTY: Does that include the iPad,  
8 iPhone, all of that information?

9 THE SPECIAL MASTER: I'm waiting to get  
10 those.

11 MS. FOLEY: But it was the ones back from  
12 September.

13 MS. WITTY: From the previous agreement?

14 MS. FOLEY: Yes.

15 THE SPECIAL MASTER: What's the issue with  
16 the search terms?

17 MS. WITTY: If I'm remembering correctly, you  
18 know, there are such things as, the word "policy" is  
19 one of the search terms.

20 THE SPECIAL MASTER: It's right there.

21 MS. WITTY: And depending on how they are  
22 run, I just want to make sure that it's not -- it's  
23 not turning over everything. I think there might be  
24 things that are responsive that don't.

25 THE SPECIAL MASTER: "Policy" isn't one of

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1       them.

2               MS. WITTY: If there is no meal break policy.

3               THE SPECIAL MASTER: "Meal/lunch policy," is  
4       that individual words, or is it a phrase?

5               MS. FOLEY: It's a phrase.

6               MR. TOSTRUD: However we negotiated it.

7               THE SPECIAL MASTER: I don't know how you --  
8       I wasn't in the negotiation.

9               MS. FOLEY: It's on the same line, so it's a  
10      phrase.

11              MR. GODINO: All those words appear on a  
12      server.

13              MS. WITTY: And see, that's the concern that  
14      I have.

15              THE SPECIAL MASTER: Did the Court issue an  
16      order around this, or should I just quickly do this?

17              MS. WITTY: I think it would be better to  
18      clarify.

19              MR. TOSTRUD: I think there was an order.  
20      I'm happy to work through it.

21              MS. WITTY: It's transcripts. That's what  
22      I --

23              THE SPECIAL MASTER: Okay. All right. So  
24      order or otherwise, if there is a transcript, can  
25      someone please provide it to me? Because I'm not

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1 going to -- I'm going to prudently support whatever  
2 ruling has been issued already.

3 MR. O'MARA: What was that date of the  
4 joint -- report? September?

5 THE SPECIAL MASTER: Yes, September.

6 MR. O'MARA: 2013.

7 MR. TOSTRUD: I've got the transcript here.

8 THE SPECIAL MASTER: 9-19-13.

9 Off the record.

10 (OFF RECORD.)

11 THE SPECIAL MASTER: Here's how this is going  
12 to go. On the record.

13 I'm ordering Mr. Edmondson to run -- take a  
14 screen shot of how he has configured the EnCase of the  
15 search terms that are currently listed plus the  
16 mobile. Okay?

17 I'm then ordering him to create a spreadsheet  
18 that outputs to me the search hit, not -- search file  
19 hits for each one of the search terms with -- I'd like  
20 to also see the sources. Since you are breaking  
21 anything into individual E01s, it shouldn't be that  
22 hard.

23 So I will know -- for instance, for  
24 Ms. Panzeri, I will know that for these 12 search  
25 terms against these sources, this is what was hit.

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1 Okay?

2 Based on that, I will either refine the  
3 search terms or amend or add to the search terms  
4 accordingly.

5 I will point out for the record that the  
6 document, which forthwith there is an affidavit  
7 coming, does someone have, that I could look at really  
8 quickly? The --

9 MS. FOLEY: The e-mail?

10 THE SPECIAL MASTER: No. The...

11 MR. TOSTRUD: Exhibit 11?

12 THE SPECIAL MASTER: Yes. Oh, not this one.  
13 The exhibit that had the --

14 MR. TOSTRUD: Oh, Exhibit 9.

15 THE SPECIAL MASTER: Exhibit 9. So just for  
16 demonstrative purposes.

17 So -- and I'm also looking at -- oh, can we  
18 enter these into evidence as well, Counsel Witty, the  
19 folders you produced as one exhibit, the custodian  
20 interviews?

21 MS. WITTY: Yes. There's actually a full  
22 copy for...

23 (OFF RECORD.)

24 (Exhibit 12 was marked for identification  
25 by the Certified Court Reporter.)



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1 (Exhibit 13 was marked for identification  
2 by the Certified Court Reporter.)

3 THE SPECIAL MASTER: I would recommend a  
4 search term like "retention schedules." I would also  
5 recommend another one where they -- and see what we  
6 get.

7 MS. WITTY: And when you say "retention  
8 schedules," I'm assuming you mean that in a paired...

9 THE SPECIAL MASTER: What?

10 MS. WITTY: So in as a single search term?

11 THE SPECIAL MASTER: Yes.

12 My problem right now is that your policies,  
13 when I'm looking at them, that you provided me, forget  
14 what they gave me, they are all different.

15 MS. WITTY: Yes.

16 THE SPECIAL MASTER: I mean, they don't have  
17 any of the same anything. Just for example, like,  
18 this one has attachment lists right here. See how  
19 that has attachment lists and then this one has  
20 attachment lists, but the other two -- these don't,  
21 but then others do, and then this has procedure and  
22 others don't.

23 So before we get to the new search terms,  
24 let's run the ones that I suggested, see what we get  
25 back, recognizing that it might be necessary once we

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1 see what the results look like.

2 I don't want to -- I want to get the hard  
3 data and then we can revisit it in a hearing, because,  
4 as much as I want to issue it now, I would rather do  
5 it with understanding what the data set actually looks  
6 like prior to making any substantive findings to what  
7 would be or not be an appropriate search term.

8 Who gave me this?

9 I think once we know the numbers and the  
10 data, we'll be able to do that.

11 Now, with regards to that, Mr. Edmondson,  
12 you'll have till the 14th to share with me those  
13 results.

14 MS. WITTY: From the intranet?

15 THE SPECIAL MASTER: No, from the first user.

16 MR. EDMONDSON: Okay. So we'll still work it  
17 within the time frame to --

18 THE SPECIAL MASTER: Yes, you will run the  
19 search terms with Mr. Espinoza, provide me the hard  
20 numbers, we'll have a phone hearing if necessary, and  
21 I will amend accordingly.

22 I want to see what we get in a rolling  
23 production, recognizing that we will supplement as  
24 necessary as we learn more. And as we actually see  
25 what the universe of data is, we can then adjust

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1 accordingly.

2 MR. TOSTRUD: Okay. May I emphasize the  
3 importance of these specific search terms by  
4 explaining the genesis of them?

5 THE SPECIAL MASTER: They were running them.

6 MR. TOSTRUD: Okay. But just so you -- we  
7 pulled all of those specific identifiers and search  
8 terms directly from the Department of Labor  
9 investigation documents that they provided. That's  
10 how we came up with them.

11 So we did what you did with the retention  
12 schedule and pulled out their language from it.

13 THE SPECIAL MASTER: I would -- so off the  
14 record.

15 (OFF RECORD.)

16 THE SPECIAL MASTER: Back on the record.

17 Is there any date parameter set for the  
18 searches?

19 MR. TOSTRUD: I think back to July of 2008.

20 MS. WITTY: That was our understanding.

21 THE SPECIAL MASTER: To when?

22 MR. TOSTRUD: Present.

23 THE SPECIAL MASTER: Today?

24 MS. WITTY: Through collection. Through the  
25 collection, yes.

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1 THE SPECIAL MASTER: Through the collection  
2 date. Okay. So there is a date limitation.

3 File types, did you guys receive the list? I  
4 haven't checked my e-mail since I've been sitting  
5 here, but Counsel Witty provided us a list of file  
6 types. Is that correct?

7 MR. O'MARA: All I have from her today is  
8 that Exhibit A.

9 THE SPECIAL MASTER: Was the file type list  
10 provided to us, to the parties yet?

11 MS. WITTY: I don't know, sir.

12 THE SPECIAL MASTER: Mr. Edmondson, you were  
13 going to generate that?

14 MR. EDMONDSON: Yes. I sent it to --

15 MS. WITTY: That was --

16 THE SPECIAL MASTER: We'll push that till  
17 Wednesday to circulate to us. We'll schedule a  
18 hearing for Thursday or Friday to go over that.

19 MR. TOSTRUD: This Friday?

20 THE SPECIAL MASTER: Yes. We can do it over  
21 the phone. It will be a quick hour hearing. What I  
22 need to know, the goal is -- and, Plaintiffs, if you  
23 want to see all the data types, fine. It's an  
24 opportunity for you to look at what the data file  
25 types are and make a finding, if you want to look at

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1       them all or not.

2               All right. There was something else you  
3       wanted to clarify?

4               MS. WITTY: Oh, when we were talking  
5       specifically about the policies and procedures  
6       viewable through the intranet, I believe it was  
7       represented by plaintiffs' counsel that one of their  
8       named plaintiffs obtained the policy with regard to  
9       record retention from the intranet.

10              However, there is a separate server that  
11       holds all those policies that is accessible through  
12       the intranet. And so we want to make sure that it is  
13       clear that we are going from the server that has --  
14       holds all those policies and procedures.

15              THE SPECIAL MASTER: I'm going to make it  
16       even clearer. I want both. Unless someone at UMC can  
17       tell me with 100 percent assurances that they are  
18       duplicative and that there are no policies sitting on  
19       the archive of the IIS server that are not in the new  
20       source -- I understand what it is today. What I'm  
21       talking about is four years ago when you were running  
22       the IIS server.

23              MR. CLARK: Maybe I could clarify. You want  
24       me to do it on the record?

25              THE SPECIAL MASTER: On the record, please.

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1 MR. CLARK: The server is a  
2 Lotus Notes/Domino. It holds all the policies. When  
3 you get to that, you click on the link on the  
4 intranet. It redirects you. It opens up another  
5 window in the browser.

6 THE SPECIAL MASTER: Perfect. So then pull  
7 that server. Pull both servers.

8 MR. TOSTRUD: And I represented that I wasn't  
9 sure where he identified it, but we are going to  
10 provide an affidavit. It may --

11 THE SPECIAL MASTER: That's fine. Give me  
12 the affidavit. All I want is that --

13 MS. WITTY: We'll cover all of our bases.

14 THE SPECIAL MASTER: I just want to make sure  
15 we don't have the conversation again.

16 So perfect. Let me be clear. Any database  
17 or server that is touching the intranet to provide  
18 policies, procedures, or protocols needs to create a  
19 logical file volume and search terms run.

20 Any other clarification there necessary?

21 Let's go off the record.

22 (OFF RECORD.)

23 THE SPECIAL MASTER: Back on the record.

24 I did want to touch -- we will get to  
25 Department of Labor. I'm not putting it off, I

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1       promise.

2               I wanted to just touch on Doug Spring's  
3       custodian interview.

4               You had a question --

5               MR. FORREST:   Yes.

6               THE SPECIAL MASTER:  -- Mr. Forrest?

7               MR. FORREST:   I do.

8               THE SPECIAL MASTER:  And just for purposes of  
9       clarification, he does not know what a dummy terminal  
10      is.  They do not have dummy terminals at UMC.  They do  
11      not exist.  They have computers with Citrix on it.

12              MR. FORREST:   Okay.  We are ready to discuss  
13      the Q drive.  We said when we see all of the drive  
14      mappings, all would be made clear --

15              THE SPECIAL MASTER:  To be clear, the Q drive  
16      is a network file share that Mr. Spring references in  
17      his custodian interview which, when we get the full  
18      chain of custody, it will say, "This is the Q drive  
19      and this is what it means."

20              Does that sufficiently answer what you are  
21      looking for?

22              MR. FORREST:   It promises an answer.

23              THE SPECIAL MASTER:  Yes, it'll tell you Q  
24      maps to this.

25              MR. FORREST:   Well, no.  I was just curious

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1       whether when it says "Q is a share drive," whether  
2       it's a personal home share or whether --

3               THE SPECIAL MASTER: Any network file share  
4       that he has access to they are going to collect and  
5       then present to counsel, then counsel will -- remember  
6       where they are going to do that whole hash value  
7       comparison, and then counsel will review it.

8               Obviously, Counsel, the Q network file share  
9       should be included.

10              When he -- he was accessing the network file  
11      share, Q drive --

12              MS. WITTY: Yes.

13              THE SPECIAL MASTER: -- whatever the Q drive,  
14      I think it's the human resource -- I don't remember.  
15      Whatever the mapping was, that should be definitely  
16      included.

17              Let me make it even more broad:

18              Any network file share referenced in any  
19      custodian interview, Plaintiffs will have the pleasure  
20      of pulling out the custodian interviews and providing  
21      it to me and to you, so that way there is no confusion  
22      as to what we're looking for, in addition to your own  
23      review of the network file shares that are collected.

24              Is that clear?

25              MS. WITTY: Yes.



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1 THE SPECIAL MASTER: And I want that by  
2 Thursday.

3 MR. FORREST: Okay. Because it refers  
4 separately to the HR share drive as well. Maybe they  
5 are the same thing.

6 THE SPECIAL MASTER: So then what I'm going  
7 to request is that you create a table that says, "Doug  
8 Spring says" -- "references four or five different  
9 share drives in his custodian interview."

10 Then you're going to provide it to everybody,  
11 so that when counsel and UMC is doing the actual  
12 collection, they can make sure that that is included  
13 within the collection.

14 MS. WITTY: So by Thursday we'll have a list  
15 of --

16 THE SPECIAL MASTER: Just from the custodian  
17 interviews. They're going to -- you are going to  
18 collect everything.

19 MS. WITTY: Right. Right. That is not at  
20 issue.

21 THE SPECIAL MASTER: This is just what I  
22 expect to be included, because the custodians are  
23 stating that they store relevant documents there.

24 MS. WITTY: But we don't need to provide by  
25 Thursday --

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1           THE SPECIAL MASTER: You provide nothing.  
2           He's giving to me on Thursday and to you a list of  
3           network file shares that are in the custodian  
4           interviews --

5           MS. WITTY: That he anticipates should be a  
6           part.

7           THE SPECIAL MASTER: -- that he anticipates  
8           should be part of what -- de minimis. I'm trying to  
9           make your job a little easier.

10          MR. FORREST: Okay. And then my second  
11          question from there was referring to the sentence in  
12          the paragraph on page 2 labeled "Handheld Devices."  
13          That's the fifth paragraph from the bottom, the line  
14          that begins "personal home computers." At the end of  
15          that the sentence begins:

16                 "As UMC does not allow his phone to  
17                 connect to servers, you can only access  
18                 e-mail through webmail within internet  
19                 browser."

20          THE SPECIAL MASTER: This is just him being  
21          technically illiterate, I believe, but what's your  
22          question?

23          MS. WITTY: Yes.

24          MR. FORREST: Does that mean essentially that  
25          he is accessing his UMC e-mail from outside using his

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1 personal device?

2 THE SPECIAL MASTER: So let me offer some  
3 clarification -- okay. Fair question. The question  
4 is, is Doug Spring using his personal device to access  
5 UMC e-mail, in this statement?

6 MR. FORREST: Via webmail.

7 MS. WITTY: That was his assertion, that he  
8 was accessing it through webmail, yes.

9 THE SPECIAL MASTER: And webmail is their  
10 Outlook client that you can log in.

11 MR. FORREST: OWM, I see.

12 THE SPECIAL MASTER: I'm assuming that's it.  
13 Nobody has called it that.

14 But the point is, is that I'm assuming it's  
15 OWM, and you are correct, and that he was using his  
16 mobile device to access OWM.

17 MR. FORREST: Well, I'm wondering  
18 whether that -- whether we need to --

19 MS. FOLEY: What does "OWM" stand for?

20 THE SPECIAL MASTER: Outlook webmail.

21 MR. FORREST: I mean, I'm just wondering  
22 whether there are things that could exist there that  
23 do not -- at this point do not exist anywhere else.  
24 That's all.

25 THE SPECIAL MASTER: In order for --

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1 Mr. Pixley, correct me if I'm wrong, but when you use  
2 OWM on a tablet, Outlook webmail client, and you send  
3 an e-mail, your tablet may cache -- it will cache the  
4 Internet page. I don't think it caches the actual  
5 e-mail message itself separately unless you are using  
6 the new Windows.

7 And I haven't actually used the Windows 8  
8 platform to how OWM integrates into it, but I do  
9 believe that on most tablets it just caches in a local  
10 copy of the Internet browser, whatever the substance  
11 of the e-mails.

12 MR. PIXLEY: I would probably, then, say that  
13 most browser -- most servers now will tell the browser  
14 to use the rule do not cache so the body of the  
15 message won't even be there. So it's not really a  
16 reliable method --

17 THE SPECIAL MASTER: Right. I agree with you  
18 100 percent. I mean, I don't -- do you guys set that  
19 rule?

20 MR. SCHAIBLEY: I'm sorry, I didn't hear what  
21 he said there.

22 THE SPECIAL MASTER: We should -- it's  
23 actually a very valid point.

24 Off the record.

25 (OFF RECORD.)

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1 THE SPECIAL MASTER: Back on the record.

2 What he pointed out is that OWM  
3 configuration, for most enterprises today, sets a flag  
4 at the server level not to cache the body of the  
5 message in the Web client.

6 MR. SCHAIBLEY: That is correct.

7 THE SPECIAL MASTER: I know he's right. What  
8 I'm asking is, is that what UMC has?

9 MR. SCHAIBLEY: I would have to go back and  
10 double-check on our policy on that.

11 THE SPECIAL MASTER: Double-check, take a  
12 screen shot, and provide it to counsel.

13 Even if they don't, even if they allow for  
14 caching, you are still talking about if he's using  
15 OWM, I don't think there is going to be anything  
16 there.

17 If he has configured the e-mail client on the  
18 iPad to directly connect through an IMAP or SMTP  
19 client, that's a different story.

20 But using OWM, I mean...

21 MR. FORREST: Well, he does say through the  
22 browser, so I presume it's over at UA (inaudible)  
23 or --

24 THE REPORTER: "Or" the what?

25 (No response.)

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1                   THE SPECIAL MASTER: Webmail, whatever  
2                   they're going to call it, the point being is that  
3                   it's --

4                   MR. FORREST: Guided by the policies that  
5                   they're setting.

6                   THE SPECIAL MASTER: Yes. So I don't think  
7                   looking at his mobile device for that makes any sense.  
8                   However, once I get my iPad, iPhone, Android results  
9                   for the "sent by," that might very well change my  
10                  personal view right now, specifically being if there  
11                  are any communications or e-mails that say "sent by,"  
12                  and I mean, a one, in order for that to happen -- let  
13                  me make this crystal-clear.

14                  In order -- and Mr. Pixley, you have more  
15                  experience with, I think, the newer versions of the  
16                  Macs. I don't have a lot of 5s experience. But the  
17                  way I understood at least the earlier versions, that  
18                  is virtually sent by iPhone 5s, you actually have to  
19                  configure your mail client on your phone so it will  
20                  append that to the signature line of the message.

21                  MR. PIXLEY: It's not there by default.

22                  THE SPECIAL MASTER: Right. It's not there  
23                  at all. So if it appears on a single one of those  
24                  e-mails sent by iPhone, it means that his phone was --  
25                  the user's phone was configured to connect to UMC's

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1 mail client and servers, and that means local copies  
2 of the entire folder structure and contents could sit  
3 on that mobile device.

4 Does that make sense?

5 Counsel for UMC?

6 MS. WITTY: Yes.

7 THE SPECIAL MASTER: We can go off the record  
8 and they can explain it, if you would like.

9 MS. WITTY: I understand.

10 THE SPECIAL MASTER: Okay. Fine.

11 Anything else for Mr. Spring?

12 MR. FORREST: No.

13 THE SPECIAL MASTER: I have one. It says:

14 "Mr. Spring did not specifically  
15 identify any computer workstations other than  
16 his Trauma Building office computer and his  
17 Delta Point office computer. He considers  
18 his Delta Point office computer 'a dummy  
19 terminal.'"

20 Because he doesn't regularly save.

21 All I want to know is, does he have his own  
22 computer, what he's talking about here?

23 MS. WITTY: Yes. He has a separate office at  
24 Delta Point.

25 THE SPECIAL MASTER: And he has a computer

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1 sitting there; is that what he is talking about?

2 MS. WITTY: Yes, yes.

3 MS. FOLEY: He's got two.

4 MS. WITTY: Yes.

5 THE SPECIAL MASTER: Yes. Just he calls this  
6 one a "dummy terminal," but it's not --

7 MS. WITTY: Because he has no idea what that  
8 term means.

9 THE SPECIAL MASTER: Right. But even if he  
10 did know what it means or he did know it, he has two  
11 computers that he -- if you don't have a key to his  
12 office, you can't use it.

13 MS. WITTY: Well, I don't know how they lock  
14 the offices. But yes, it's his office. It's isolated  
15 for his use.

16 THE SPECIAL MASTER: I'm not allowed to go in  
17 there and hang out and write e-mails, so I'm going to  
18 go with --

19 MS. FOLEY: Especially not you.

20 THE SPECIAL MASTER: Especially not me. I am  
21 forsaken from entering.

22 Okay. Let me see if there are any -- does  
23 anybody have a hard stop?

24 That's fantastic.

25 Then I did have a chance to read Mrs. Myers'.



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1 I'm going to ask that counsel for the plaintiffs will  
2 go off the record and you specifically read Ms. Myers'  
3 custodial interview and then we'll go back on the  
4 record.

5 (OFF RECORD.)

6 THE SPECIAL MASTER: Who is Maria Hernandez?

7 MS. WITTY: She is an HR analyst.

8 THE SPECIAL MASTER: And what does "long-term  
9 storage for HR" mean?

10 MS. WITTY: The -- so anything that leaves  
11 the HR storage --

12 THE SPECIAL MASTER: Electronic or paper?

13 MS. WITTY: Yes.

14 THE SPECIAL MASTER: Does she have a log?

15 MS. WITTY: I would presume so.

16 THE SPECIAL MASTER: Can you please get it  
17 from her?

18 MS. WITTY: I will say they have not sent  
19 anything out in a very long time, but we'll make  
20 sure --

21 THE SPECIAL MASTER: I read it. The last  
22 thing is that the CEO got interviewed or hired.

23 MS. WITTY: That was two CEOs ago.

24 THE SPECIAL MASTER: Now, she also  
25 mentioned -- people mention they have access to the

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1 AS/400, which takes me to my point earlier about  
2 applications and data. That's patient tracking. Does  
3 the AS/400 hold payroll data?

4 MR. LATTIN: I don't have any knowledge of  
5 that.

6 THE SPECIAL MASTER: The reason I ask is  
7 because, if you read her sentence, she says,  
8 "AS/400-older patient tracking information, used by  
9 HR/payroll, purely historical information (check  
10 timekeeping/pay rate that is now in SAP)."

11 When did you switch to SAP?

12 MS. WITTY: I believe the same time they  
13 switched to Kronos in 2007.

14 THE SPECIAL MASTER: So there would be no  
15 relevant records in the AS/400?

16 MS. WITTY: No.

17 MR. CLARK: What they -- let me clarify.

18 Okay. When we switched over to Kronos in  
19 2004, we put Kronos Timekeeper on the AS/400. Then we  
20 switched to Workforce Central, then we moved all that  
21 data into Workforce Central, which is its own  
22 application and own database server. Then when SAP  
23 went live, it kind of fed into SAP at the County.

24 THE SPECIAL MASTER: Okay. So it's not  
25 sitting on the AS/400 today?

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1 MR. CLARK: It shouldn't be. My  
2 understanding is the application is gone.

3 MS. WITTY: The -- what I understand with --  
4 specifically with regard to what Claudette is  
5 accessing, is when there is someone who, from decades  
6 past, so ten years or more ago, needs specific  
7 information from their employment records, that's  
8 where it would be located and that's why she has  
9 access.

10 I know that there are several individuals on  
11 the opt-in plaintiffs' list that have been there for  
12 20 years or more, and that's where that information  
13 would start.

14 MR. CLARK: I might add, the AS/400 is just a  
15 mid-range, and primary Timekeeper was on it,  
16 MedSeries 4 is the clinical product that's on it as  
17 well.

18 THE SPECIAL MASTER: Oh, really?

19 MR. CLARK: Yes.

20 THE SPECIAL MASTER: Today?

21 MR. CLARK: Yes.

22 THE SPECIAL MASTER: You are running Kronos  
23 off the AS/400?

24 MR. CLARK: We moved it off to work with  
25 Central on an application database server platform, HP

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1 servers.

2 THE SPECIAL MASTER: Okay. Which one? You  
3 are using HP servers, not the AS/400?

4 MR. CLARK: Right. The IBM --

5 THE SPECIAL MASTER: Did you migrate the  
6 data?

7 MR. CLARK: The company came in, and we moved  
8 everything off.

9 THE SPECIAL MASTER: All right. Right. So  
10 they migrated?

11 MR. CLARK: Right.

12 THE SPECIAL MASTER: Okay. So there was  
13 nothing in there that wasn't in the new one. As long  
14 as they migrated it, I'm okay. If they didn't, I have  
15 an issue.

16 Okay. Then my other question for her is --  
17 oh, what was it? The only thing Claudette burns to  
18 disc are hearing records for union, labor relations,  
19 and hearing officers.

20 I don't mean to sound ignorant about what you  
21 do, but what does that mean?

22 MS. WITTY: They're audio recordings. All of  
23 the hearings involving grievances that are taken up  
24 through the union are recorded audio.

25 THE SPECIAL MASTER: So these are, like,

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1 audio actual recordings?

2 MS. WITTY: Hearings. It'd be exactly like  
3 what the Court would record if they were recording  
4 today.

5 THE SPECIAL MASTER: Okay. All right.

6 MR. TOSTRUD: Have those been produced, the  
7 audio of the hearings?

8 MS. WITTY: I don't believe that any have  
9 been produced.

10 THE SPECIAL MASTER: They haven't been  
11 collected yet. So before we get to their  
12 production --

13 MS. WITTY: I don't know that they would  
14 be --

15 THE SPECIAL MASTER: Well, before we get  
16 there, one sec.

17 Are the hearing -- do we have -- the reason  
18 why I'm asking is, now that I know what they are, are  
19 they considered to be a responsive source of  
20 information?

21 MS. WITTY: I would need to look specifically  
22 at the request to know what they were responsive to.

23 THE SPECIAL MASTER: Okay. So can you  
24 just -- now that we know they exist, can you go learn  
25 more about them and then figure out if they are

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1 responsive or not? Because she doesn't even give us a  
2 date range.

3 Okay. My next thing, this is where the  
4 intranet -- why I am making you pull from both. It's  
5 exactly this sentence:

6 "Posts copies of a lot of forms to  
7 intranet. Does not share a log-in with  
8 anyone."

9 Can someone please explain to me where she's  
10 writing on the intranet?

11 MS. FOLEY: I don't see that she is.

12 THE SPECIAL MASTER: It says: "Post copies  
13 of a lot of forms to intranet." Third paragraph, same  
14 page. I can show you.

15 Off the record.

16 (OFF RECORD.)

17 THE SPECIAL MASTER: Back on the record.

18 Does the intranet have read/rewrite -- well,  
19 obviously it has write capability for some servers.  
20 What is she writing to and where is she writing? And  
21 let me just throw on: I'm ordering you to figure that  
22 out and collect if you do not know.

23 MS. WITTY: I think that might be additional  
24 clarification required.

25 THE SPECIAL MASTER: You can go back and talk

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1 to them. All I want you to do is figure out --  
2 because she says very clearly "posts copies of a lot  
3 of forms."

4 She doesn't say I'm, like, posting.  
5 There's -- it's a very clear activity; right? You  
6 collect, attach, and you hit "post" or "send" or  
7 something. And she has her own login.

8 So please go -- if you don't know, remember,  
9 it's okay to say "I don't know." What I do need you  
10 to do is figure it out and provide, and under a  
11 page -- well, two pages on the outside, some sort of  
12 explanation as to what she's posting to, how she's  
13 posting to it, where is it storing it, how long -- how  
14 far back does it go.

15 Because apparently she has -- I don't even  
16 know -- I don't know.

17 MR. FORREST: Do you know what "CHRO" is?

18 MS. WITTY: Chief human resources officer. I  
19 apologize.

20 MR. FORREST: "Has access to CHRO," makes it  
21 sound like it's a thing.

22 THE SPECIAL MASTER: You didn't read it  
23 beforehand. This is actually much cleaner.

24 What I think she's referring to is that --  
25 when she says "has access to the CHRO," I assume that

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1 means she has access to his calendar and e-mail.

2 MS. WITTY: Yes. And I don't know if this is  
3 clear on the records that are attached.

4 THE SPECIAL MASTER: Do you want to go on the  
5 record? Are we off? We've been on the record. Do  
6 you want to go on the record for the statement?

7 MS. WITTY: Oh, yes, that's fine. There --  
8 you can -- within the print screens of the custodian's  
9 inboxes, you can see where they have shared access.

10 MR. FORREST: It's kind of hard to read.

11 THE SPECIAL MASTER: She sent a soft copy.  
12 You could blow it up.

13 MR. FORREST: Okay. Those are all shared  
14 mailboxes down there at the bottom?

15 MS. WITTY: I believe so.

16 THE SPECIAL MASTER: That's just the screen  
17 shot. We're going to ask the Exchange guy if they are  
18 shared mailboxes. But you are going to have a list of  
19 questions from when you extensively review these, so  
20 we don't revisit the issue twice.

21 My only other question I have, because I  
22 assume they'll have a -- she -- if information -- if  
23 important information is needed, she sends an e-mail,  
24 Knows there's an option within SAP to send a message,  
25 but doesn't know if anyone uses it. She tried to send



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1 a message, but it wasn't returned.

2 Does anybody else use SAP messaging?

3 MS. WITTY: Nobody else even knew about it,  
4 and I checked with Jackie Panzeri because I figured  
5 she would be the most likely. No, yes, no one else  
6 even knew that there was messaging available.

7 It's also because of the limitations for  
8 people who have access to SAP, who has messaging  
9 capabilities is also limited.

10 THE SPECIAL MASTER: Very limited. Actually  
11 that's kind of disappointing.

12 Now, here's my other question:

13 "When phones needed upgrading or  
14 servicing, Telecommunications Specialist Tina  
15 Burrage-Simon or Sandra Sandoval serviced  
16 John's phone."

17 That's the whole conversation we had earlier  
18 today; right?

19 MS. WITTY: I apologize. We were discussing  
20 the mailboxes. Could you repeat that?

21 THE SPECIAL MASTER: Where she says that she  
22 spoke to Telecommunications Specialist Trina  
23 Burrage-Simon or Sandra Sandoval, services John's  
24 phone, that's that whole upgrade thing?

25 MS. WITTY: Yes.

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1 THE SPECIAL MASTER: Does she have a record  
2 of when that happened? Because they don't keep any  
3 records.

4 MS. WITTY: I will check.

5 THE SPECIAL MASTER: Is there no IT ticket  
6 help desk for the phone service?

7 MR. SCHAIBLEY: Typically for the phones, no.  
8 It would typically be a phone call or an e-mail  
9 directly down to either Susie or Trina or Sandra.

10 THE SPECIAL MASTER: What about in the  
11 atypical situation? I just want to know. Like, you  
12 have a help desk system. Do people use it to log and  
13 request phone help, or it just a  
14 walk-down-and-hang-out kind of --

15 MR. SCHAIBLEY: Yes, typically you would call  
16 the help desk and have a ticket opened.

17 THE SPECIAL MASTER: So can you check to see  
18 if any tickets were opened for that? I'll give you  
19 the 25th on that. I'm kidding. I'll take it on the  
20 15th.

21 That covers the custodian interview questions  
22 I have.

23 MR. FORREST: I'm just wondering about this  
24 whole scanning process.

25 THE SPECIAL MASTER: For the CEO search?

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1                   MR. FORREST: No, no, but you -- in the last  
2                   paragraph here, "did not get involved with the DOL  
3                   investigation except to assist" Espinoza and Spring  
4                   and "in gathering information from other people  
5                   (requesting reports from payroll, etc)." She "does  
6                   not remember specific documents, but by practice would  
7                   have scanned everything possible into a folder on  
8                   common drive. Doug would have hard copy duplicates if  
9                   any were kept."

10                  THE SPECIAL MASTER: That's that network file  
11                  share thing.

12                  MS. WITTY: And it has been requested.

13                  MR. FORREST: Okay. I'm just wondering  
14                  whether she's the only person who's scanning  
15                  documents. Is it typical that people are scanning  
16                  paper documents, putting them somewhere?

17                  THE SPECIAL MASTER: Okay. Is it a specific  
18                  question for Claudette, before we get to everybody  
19                  else?

20                  MR. FORREST: Well, I guess it suggests that  
21                  there is a specific folder for the DOL --

22                  THE SPECIAL MASTER: There is no doubt that  
23                  they gathered records for the time that they ran the  
24                  investigation, by their own admission, and they  
25                  scanned them in and that they have them sitting in the

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1 network file share; and that Counsel for UMC, now that  
2 they're aware of it, are going to go get that file  
3 share and produce it.

4 That's the whole exercise of them having a  
5 rolling production and getting the information and  
6 giving it to us.

7 MR. PIXLEY: I would be curious to what  
8 format she is scanning those documents into, since we  
9 were asking that question about file types.

10 THE SPECIAL MASTER: Yes, I'm not sure.

11 MR. PIXLEY: It just depends on the person.  
12 I see some people scan things into JPEG format and  
13 then you say, "Well, I don't need to look at JPEGs."

14 THE SPECIAL MASTER: You're going to look --  
15 oh, I get it. So here's the deal. If you guys want  
16 them to cut down your format file type list, you are  
17 going to have to answer his question. If you don't  
18 want to cut the format file type list down, then you  
19 don't have to answer his questions.

20 MR. PIXLEY: Sounds reasonable.

21 THE SPECIAL MASTER: Does that make sense?

22 Off the record.

23 (OFF RECORD.)

24 MS. WITTY: So the scanning stations, the  
25 copy machines, the physical device that is set up for

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1       this process for scanning is only configured to allow  
2       PDFs, and that is immediately saved to the Q drive.

3               THE SPECIAL MASTER: Do you have a -- is  
4       there a policy or a configuration? Is this for -- my  
5       concern is that -- is this for the machine she's using  
6       or -- how about this:

7               Confirm that the machine she's referring to  
8       that she has access to is configured in the same or  
9       similar fashion and then we're okay. All right?

10              Any questions, Plaintiffs, about it, now that  
11       I made you take a look at it, about that one  
12       interview?

13              MR. PIXLEY: That's fine.

14              MR. GODINO: Are you talking about -- I  
15       assume -- she talks about receiving cancellation --  
16       run requests by e-mail. So I assume that will get  
17       picked up in the search.

18              THE SPECIAL MASTER: Not with your search  
19       terms, but yes, hopefully it would.

20              MS. WITTY: Best intention.

21              MR. GODINO: Well, it would, with our search  
22       terms, "lunch."

23              THE SPECIAL MASTER: You don't have "lunch"  
24       stand-alone.

25              I'll fix the issue with the search term

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1 downstream. Why don't you just flag the issue and  
2 make sure we revisit it in a couple of days.

3 MR. GODINO: And on this, I question -- she  
4 says she keeps binders --

5 THE SPECIAL MASTER: There we go.

6 MR. GODINO: -- for attestation and  
7 attestation forms, and I don't think those have been  
8 produced.

9 THE SPECIAL MASTER: I had to look up what  
10 that meant, and so that's why I had you read it,  
11 because I didn't actually know your area of the law,  
12 which is why I wanted you to read it specifically. I  
13 would actually -- it is relevant and responsive;  
14 right?

15 MR. GODINO: It is highly relevant.

16 THE SPECIAL MASTER: Okay. I'm just  
17 checking. I did not know. So my point is, have they  
18 been produced?

19 MS. WITTY: I cannot speak to that at this  
20 moment.

21 THE SPECIAL MASTER: That's fine.

22 MS. WITTY: I believe that some have.

23 THE SPECIAL MASTER: Can you do me a favor,  
24 please? By this Thursday, check?

25 MR. GODINO: I'm pretty sure none have.

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1           THE SPECIAL MASTER: I know you are "pretty  
2           sure." Let her double-check to confirm. If any have,  
3           please provide the Bates-stamp numbers. If they  
4           haven't, we have a rolling production. Please be sure  
5           to include them.

6           MR. GODINO: And -- and the hundred percent  
7           of them, not just some of them.

8           THE SPECIAL MASTER: Well, whatever the  
9           privilege she wants to search or relevancy or  
10          whatever, then that's the whole idea of being a lawyer  
11          in production, and you can bring the argument to me if  
12          the production is insufficient. But let us get there.

13          MR. GODINO: Well, I'm saying, like she says  
14          they have produced some. I want all of them produced.  
15          She's going to have -- she's going to withhold on --

16          THE SPECIAL MASTER: Wait, wait. One second.  
17          Let's go off the record.

18                   (OFF RECORD.)

19          THE SPECIAL MASTER: Back on the record.

20          I'm going to order UMC to review and produce  
21          everything that she had in her possession, custody, or  
22          control that is in compliance with the order and  
23          motion to compel that was already ordered as a rolling  
24          production and to start immediately.

25          MS. WITTY: I understand that.

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1 My question is the form. Do they want it

2 scanned --

3 THE SPECIAL MASTER: I thought --

4 MS. WITTY: (Inaudible word.)

5 THE SPECIAL MASTER: -- in the production  
6 protocol. Oh, wait, actually, you are right, because  
7 we got rid of that. So can it just be scanned PDFs  
8 that are OCR searchable?

9 MR. FORREST: Well, I think it's covered in  
10 the revised protocol. And I think single-page TIFF  
11 sounds --

12 THE SPECIAL MASTER: I thought we got rid of  
13 single-page TIFFs?

14 MS. FOLEY: I thought we got rid of TIFFs?

15 THE SPECIAL MASTER: I'm pretty sure we got  
16 rid of single-page TIFFs.

17 MS. FOLEY: We talked through it on the 7th.

18 MR. FORREST: Of hard copy documents?

19 THE SPECIAL MASTER: I thought you wanted OCR  
20 PDFs.

21 MS. FOLEY: Yes.

22 THE SPECIAL MASTER: I thought you wanted to  
23 receive the documents searchable as PDF forms that  
24 were scanned in, and that they were going to do it,  
25 and you were going to do it for them. If you want



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1       TIFFs as image files that you OCR yourself, I don't  
2       think they are going to complain.

3               MS. FOLEY: And I think you brought up TIFFs  
4       but then said, "Oh, PDFs," but I could be wrong.

5               THE SPECIAL MASTER: If you just wanted to  
6       scan and I give you unsearchable TIFF files that you  
7       then OCR, fantastic. I don't know why you wouldn't  
8       take OCR'd PDFs.

9               MR. FORREST: Well, I thought we were taking  
10       OCR single-page TIFFs.

11              THE SPECIAL MASTER: I can look at the  
12       hearing notes.

13              Actually, you know what? How about you find  
14       in the transcript where we said we would take OCR  
15       TIFFs?

16              MR. FORREST: Okay. I will.

17              THE SPECIAL MASTER: Okay? If we said OCR  
18       TIFF -- however we agreed in the transcript is how  
19       we'll produce. We will move forward because everybody  
20       agreed during that hearing, and I don't need to  
21       revisit it now.

22              MR. FORREST: That's fine.

23              THE SPECIAL MASTER: What I do need to  
24       revisit is I need it to be turned over and reviewed  
25       starting immediately, because I had to go -- I didn't

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1 even connect all the dots the first time I read it.

2 So what I also would request is that you go  
3 ask the other custodians, "Do you have attestation  
4 forms behind your desk," because she seems to indicate  
5 that it's common practice, at least for her in her  
6 department.

7 MS. WITTY: She is a timekeeper in HR, so she  
8 would be the only individual in HR that would have  
9 those.

10 THE SPECIAL MASTER: Okay. I don't know if  
11 there are other -- whoever else may be within the  
12 ambit of that --

13 MS. WITTY: Right.

14 THE SPECIAL MASTER: -- please speak with  
15 them and confirm. And if they do have, please  
16 accordingly update your production.

17 Anything else, Plaintiffs?

18 MR. GODINO: She mentions several times --  
19 she seems to be one of these shredding individuals,  
20 and I just want --

21 THE SPECIAL MASTER: Where?

22 MR. GODINO: She mentions a few times about  
23 she likes to shred documents.

24 THE SPECIAL MASTER: Most people really like  
25 the word "shred." "Shred" just means that they are

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1 smart and getting rid of data. Now, I don't read

2 "shred" the same you do.

3 MR. GODINO: I know you mean literally shred  
4 it.

5 THE SPECIAL MASTER: I mean literally, like,  
6 I'll shred hard drives, I'll shred --

7 MR. GODINO: You're talking about eradicating  
8 or eliminating.

9 THE SPECIAL MASTER: Eradicate, eliminate,  
10 destroy. If you show me where she says "shred," I  
11 actually have no qualms with exploring it, and I give  
12 full merit and credence to your discussion. I just --  
13 if you point out where.

14 MR. GODINO: Under "Hard Copies," she says,  
15 "If minutes are required for meeting, Claudette will  
16 type up notes and handwritten reference is shredded."

17 THE SPECIAL MASTER: Then she's shredding.  
18 So she gets her notes, types them up, and then shreds  
19 them.

20 MR. GODINO: So, I mean, my question -- she  
21 mentions shredding in other parts of this, so I'm just  
22 making sure that she knows that there's a litigation  
23 and she's no longer destroying documents.

24 THE SPECIAL MASTER: I'm assuming that nobody  
25 within UMC that is involved in this litigation is

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1 actively shredding anything at this point.

2 Can you please make sure Claudette has  
3 received the litigation --

4 MS. WITTY: She has, and we will reaffirm as  
5 to custom.

6 THE SPECIAL MASTER: Fair enough. So let's  
7 assume that everybody has gotten the memo.

8 MR. TOSTRUD: Dovetailing on that point --

9 THE SPECIAL MASTER: Department of Labor?

10 MR. TOSTRUD: No. I don't think the  
11 plaintiffs have received any of the so-called meeting  
12 minutes that she refers to.

13 THE SPECIAL MASTER: That was a question I  
14 had. I didn't know -- this is where -- this speaks to  
15 your litigation, and so I don't know -- again --

16 MS. FOLEY: With County commissioners, yes,  
17 there's -- a lot of these are open meeting law  
18 meetings and with minutes posted.

19 MR. TOSTRUD: Well, we haven't received  
20 those, I don't believe.

21 Furthermore, Mr. Espinoza testified in his  
22 deposition last April that there were multiple  
23 meetings that occurred --

24 THE SPECIAL MASTER: Let's focus on her.  
25 We'll get to him.

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1 I had the same question, but I don't actually  
2 know the substance of it. But if the meeting minutes  
3 are relevant, I would assume they should be reviewed  
4 and turned over.

5 MS. FOLEY: Right, and I'll look back at the  
6 requests.

7 THE SPECIAL MASTER: Yes, just look at the  
8 document requests. But she clearly indicates there  
9 are meeting minutes and that they should be in --

10 MS. WITTY: I think that what might be more  
11 helpful instead of -- I don't want this to devolve.  
12 With this information from the custodian interviews,  
13 it may be more helpful instead of -- for there to be a  
14 list created and say, "This is something we're  
15 interested in and we don't think we have."

16 THE SPECIAL MASTER: Perfect. I'm going to  
17 order Plaintiffs to please go through each one of the  
18 custodian interviews by this Thursday and compile a  
19 list of every -- and I am expecting UMC to do the  
20 same, okay? -- that identifies all of the document  
21 sources that are yet to be provided that are  
22 accordingly, for example, the meeting minutes.

23 Because unfortunately, I don't know the  
24 underlying merits of your case, so I don't know if the  
25 meeting minutes make sense or not.

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1 MR. TOSTRUD: We absolutely will do that,  
2 Mr. Garrie, but I want to point out that the  
3 obligation, particularly after losing a motion to  
4 compel, is on the defendant and on defense counsel.

5 THE SPECIAL MASTER: Did that include meeting  
6 minutes?

7 MR. TOSTRUD: To identify all relevant  
8 evidence and turn it over to us.

9 Now, we can have a further discussion. I  
10 don't think Magistrate Leen wants us to go back in  
11 there on a motion to compel again. She ordered that  
12 they produce all relevant information. I think there  
13 can be no question that now the obligation is on them.

14 But we will provide a list of things that we  
15 identified --

16 THE SPECIAL MASTER: How about you -- how  
17 about provide, in the spirit OF cooperation, a helping  
18 hand to facilitate the expeditious production, and  
19 they will diligently do the same.

20 And I expect UMC to provide and identify a  
21 full and exhaustive list of everything that's in these  
22 custodian interviews upon which -- and you will  
23 provide as well, so nothing falls through the cracks.

24 MR. TOSTRUD: I will just put on the record  
25 now that one of the things that Plaintiffs are

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1 absolutely interested in and need to be produced  
2 immediately in whatever format we agreed to on Friday  
3 are the schedules and, you know, anything relating to  
4 employee schedules and assignment sheets for all the  
5 people in the hospital, all of our 600-plus people.

6 THE SPECIAL MASTER: Right. So we're going  
7 to identify anywhere they reference in here that may  
8 or may not have been collected the first time. And if  
9 they haven't --

10 MS. FOLEY: Didn't we give you samples? I'm  
11 trying to remember.

12 MR. TOSTRUD: Well, you've provided samples,  
13 but we want all of the information.

14 MS. FOLEY: Okay. Okay. I may have missed  
15 that.

16 THE SPECIAL MASTER: So we've got it recorded  
17 for the record.

18 I, unfortunately, don't know the  
19 underlying-- to me, meeting minutes are like --

20 MR. TOSTRUD: I understand.

21 THE SPECIAL MASTER: So, I mean, if it's  
22 critical to your case, then I'm encouraging you to  
23 educate me as the e-discovery special master that  
24 meeting minutes are critical. Because, mind you, I've  
25 read now 47,000-plus pages of paper in this matter.

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1       So I am becoming familiar with the topic, but I  
2       certainly don't have your expertise or skills.

3               And for that matter, can you also when you  
4       search -- when you go -- this returns back to my point  
5       early on right after the break.

6               When you supplement your production in the  
7       rolling, I'm betting that on the intranet there are  
8       similar sorts of records perhaps stored, so please be  
9       mindful of that.

10              And my advice to UMC is that you consider  
11       creating some search terms rather than reading every  
12       document on the intranet that will allow you to  
13       identify this, because I have a hunch that there are a  
14       lot of them.

15              But if that's where they are storing them,  
16       you have an obligation to check and in a complete and  
17       thorough and reasonable fashion.

18              MS. FOLEY: Okay.

19              THE SPECIAL MASTER: Okay. Department of  
20       Labor, I'm going to take a stab here at this because  
21       we had prior conversations about this.

22              Based on what Claudette testifies to, I'm  
23       going to go -- or, no, didn't testify; I stand  
24       corrected -- submitted in her custodian interview, I'm  
25       going to go out on a limb and say that it might be



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1       worthwhile for UMC's counsel to go back and speak with  
2       Mr. Spring and the others who Claudette -- and John  
3       Espinoza, who she says "scheduling telephone calls,  
4       gathering information from other people, requesting  
5       reports from payroll."

6               MS. FOLEY: Yes. And Jackie Panzeri, I  
7       believe, said she assembled the data, and that was the  
8       spreadsheet that we produced.

9               THE SPECIAL MASTER: She says "gathering  
10      information from other people." One spreadsheet is  
11      different than like, etc., etc.

12              MS. FOLEY: Sure. But there were also some  
13      hard file documents that -- correspondence and stuff  
14      that was produced. But we'll keep --

15              THE SPECIAL MASTER: Then she goes on to say:

16                      "Claudette does not remember specific  
17                      documents, but by practice would have scanned  
18                      everything possible into a folder on a common  
19                      drive."

20                      Which means somewhere within UMC's network  
21                      exists several or at least one folder, which probably  
22                      has sub-folders in it, that relate to the efforts by  
23                      these different custodians to gather documents in  
24                      response to the Department of Labor investigation.

25              MS. FOLEY: And I believe we have produced

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1       those, but I will certainly check on that.

2               THE SPECIAL MASTER: But you'd have -- the  
3       folder, the network file share folder, hasn't been  
4       provided to them.

5               MS. FOLEY: But if she scanned documents and  
6       put them in a folder.

7               THE SPECIAL MASTER: No. She helped  
8       participate. She didn't own the folder. She didn't  
9       say, "I created the folder and I was the folder  
10      owner."

11              She is part of the network file share where  
12      multiple people were all contributing files to it.  
13      And unless they gave you the folder --

14              MS. WITTY: Right. Essentially, what you are  
15      asking is that, in our review of that --

16              THE SPECIAL MASTER: It's a common drive.

17              MS. WITTY: Right.

18              THE SPECIAL MASTER: So, like, what it means  
19      is that multiple people, in all likelihood, were  
20      contributing to that folder which you haven't been  
21      provided because it was never collected and never  
22      searched.

23              MS. FOLEY: It's -- it's possible, certainly.

24              THE SPECIAL MASTER: Well, I mean, unless the  
25      network file --

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1 MS. FOLEY: You see, I -- my -- the way I

2 picture it is that she just -- there were some --

3 THE SPECIAL MASTER: No, I think she --

4 MR. FOLEY: -- there.

5 THE SPECIAL MASTER: Let's be clear.

6 MS. FOLEY: Other people suggest --

7 THE REPORTER: One at a time.

8 THE SPECIAL MASTER: So I believe that

9 whatever she had, that she -- you in good faith have  
10 given over. I'm not saying -- I'm not in any way  
11 stating that you have withheld anything.

12 What I am saying is that UMC, your client,  
13 created a network file share folder called the  
14 "Department of Labor," whatever, as a common file  
15 share, which would imply that more than just she was  
16 using and putting documents in it.

17 So I would --

18 MS. WITTY: We need to identify other --

19 THE SPECIAL MASTER: Just identify who has  
20 had access to it, who is putting documents into it,  
21 and just make sure to turn them over.

22 MS. FOLEY: Okay.

23 THE SPECIAL MASTER: And then, obviously, any  
24 other sources that may or may not --

25 MR. GODINO: So, obviously since defense

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1 counsel hasn't even reviewed those documents yet,  
2 obviously they couldn't have been produced.

3 THE SPECIAL MASTER: Well, they reviewed --

4 MS. FOLEY: Well, you are assuming that they  
5 exist.

6 THE SPECIAL MASTER: Wait. So let's be  
7 clear. They reviewed the paper versions that  
8 Claudette has had and they've given to you.

9 What we have established is that the network  
10 file shares were not collected. So until they are  
11 actually collected, the common folders that they are  
12 referring to in her custodial interview could not have  
13 been searched or reviewed by counsel because they  
14 weren't given to counsel by UMC.

15 MR. GODINO: That's what I'm saying.

16 THE SPECIAL MASTER: So even though counsel  
17 requested them, there is a disconnect. Okay? So once  
18 they get them, I promise you, on our rolling basis,  
19 they will happily turn them over to you. I don't  
20 think there is any desire to not turn them over. It's  
21 more a desire to have UMC as the client saying, "Here  
22 you go."

23 And so which leads me to my point, at the  
24 next hearing, I'm on the fence about whether -- strike  
25 that.

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1 Yes, Counsel?

2 MR. TOSTRUD: A couple of documents that I'd  
3 like to enter into the record.

4 THE SPECIAL MASTER: Regarding the Department  
5 of Labor investigation?

6 MR. TOSTRUD: Regarding the -- yes, exactly  
7 what we are talking about with Ms. Panzeri.

8 THE SPECIAL MASTER: I didn't get to  
9 Ms. Panzeri, but you can kick us off.

10 MR. TOSTRUD: Okay. This is an e-mail  
11 Bates-stamped UMC 100007 from Jackie Panzeri, dated  
12 Thursday, March 28, 2013, relating to calculations  
13 that were done in response to the Department of Labor  
14 meal break compensation.

15 THE SPECIAL MASTER: Before you read it into  
16 the record, can you show it to counsel, and strike  
17 what he just read and we'll submit it and he can read  
18 it.

19 MR. TOSTRUD: Fair enough.

20 THE SPECIAL MASTER: And just for everybody's  
21 edification, it's the last piece for the -- unless,  
22 Counsel for Plaintiff, there is additional points that  
23 you'd like to discuss.

24 MS. WITTY: I guess I'm not sure why this is  
25 being entered. We fully understand that there are

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1 additional custodians that would have collected  
2 information and data for this, and this has already  
3 been produced. We intend to produce any and  
4 everything that is relevant and not privileged.

5 THE SPECIAL MASTER: Can I see it?

6 MR. TOSTRUD: Sure. The reason it's being  
7 entered into the record is that the document  
8 specifically references simulations that were done in  
9 SAP relating to the Department of Labor calculations.

10 THE SPECIAL MASTER: That's TS1.

11 MR. TOSTRUD: And so we would like to get a  
12 copy of whatever those simulations were based on.

13 MS. FOLEY: You have the copy, I believe.

14 MR. TOSTRUD: I don't believe we do.

15 THE SPECIAL MASTER: Wait, wait. You do  
16 believe; you don't believe. Let's make it simple.  
17 Can you please check to see if it's been turned over.  
18 If so, provide the Bates stamp numbers, and that'll  
19 put an end to that.

20 Now, what I do want to point out -- I'm going  
21 to enter it in for one single, simple purpose -- is  
22 that I would believe -- I want to know where  
23 Ms. Panzeri put these documents. I just want to know  
24 that, Counsel for UMC, that Ms. Panzeri, whatever she  
25 did with this, that you have -- she can properly

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1 account for and what and where the documents were  
2 provided.

3 And I fully believe that when you say you  
4 have turned them over, that you have turned them over  
5 and you will provide the Bates stamps. If you  
6 haven't, you will turn them over and then they will be  
7 Bates-stamped.

8 So my point being is that what I am more  
9 interested in is, is where did she stick them.

10 MS. WITTY: Could you read the date?

11 THE SPECIAL MASTER: It's been entered in.  
12 March 28th, 2013, 11:37 a.m.

13 (Exhibit 14 was marked for identification  
14 by the Certified Court Reporter.)

15 We can go off the record.

16 (OFF RECORD.)

17 THE SPECIAL MASTER: Back on the record.

18 I'm going to request that UMC identify what  
19 TS1 is, and I believe it is the SAP test environment  
20 as she indicates, but if you could please identify it.

21 I'm also ordering UMC to go back to  
22 Ms. Panzeri and find out where she stuck these  
23 documents within the network file share that she did  
24 generate, and make sure that all documents that do  
25 exist tangentially, directly, or otherwise are

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1 reviewed and either recorded and documented and  
2 produced or withheld on privilege or ignored because  
3 they're pictures of her dog, okay, or whatever.  
4 Whatever may fall within that purview. Okay?

5 MR. TOSTRUD: There is one final document I'd  
6 like to introduce.

7 THE SPECIAL MASTER: So please show them.

8 MR. TOSTRUD: It's part of Espinoza's  
9 deposition.

10 MS. WITTY: What pages?

11 MR. TOSTRUD: I'm going to mark pages 151  
12 through 171, but specifically the page that I'm going  
13 to refer to is at page 170, line 21.

14 THE SPECIAL MASTER: Do you have any  
15 objection? I haven't seen it yet, but do you have any  
16 objection?

17 Can I see it?

18 MR. TOSTRUD: Sure. It's the Espinoza  
19 deposition. And here he refers to a summary report  
20 that he thinks is available.

21 THE SPECIAL MASTER: Who is Ms. Hernandez,  
22 again?

23 MS. WITTY: Ms. Hernandez is Maria Hernandez.  
24 She is an HR analyst.

25 As has been stated, we intend to review the



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1 DOL information. We will continue to supplement any  
2 information that is located and not privileged for  
3 production.

4 MS. FOLEY: And I believe we did produce  
5 that.

6 MS. WITTY: We do believe that the  
7 calculations that are referenced were produced.

8 THE SPECIAL MASTER: The summary report?

9 MS. FOLEY: Yes.

10 MS. WITTY: Yes.

11 THE SPECIAL MASTER: Okay. So what I'm going  
12 to do is I'm going to enter it in and you are going to  
13 provide the Bates stamp numbers for your production of  
14 it, and I'll put that to -- as the next evidence --

15 MR. TOSTRUD: 15, I think.

16 (Exhibit 15 was marked for identification  
17 by the Certified Court Reporter.)

18 THE SPECIAL MASTER: Off the record.

19 (OFF RECORD.)

20 THE SPECIAL MASTER: Let's go back on the  
21 record really quickly.

22 I'm ordering UMC to provide the Bates stamp  
23 number for the documents they provided.

24 Again, what I want to know is where did he  
25 store it in UMC's network file share, and if he put it

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1 in a shared file folder, take a look. Okay?

2 MS. FOLEY: The one he shares with Claudette?

3 THE SPECIAL MASTER: It could be Claudette.

4 Who knows. Okay.

5 But please, UMC's IT people, can you please  
6 go back to Mr. Spring and Mr. Espinoza and explain to  
7 them what a "dummy terminal" is and is not? All  
8 right. And just, if you need to, I'm happy to have  
9 them appear before me so I can explain, because they  
10 are making our lives more difficult.

11 Okay. Now -- anything else with the DOL?

12 MR. TOSTRUD: Yes. We have yet, I think, to  
13 get the exact date of the start of the Department of  
14 Labor investigation. They were going to provide that  
15 today.

16 MS. WITTY: Timeline. Mr. Espinoza is not  
17 available and that is why we do not have a firm  
18 timeline.

19 THE SPECIAL MASTER: There you go. I'm going  
20 to order you, by next Monday, the 14th -- the 15th,  
21 Tuesday, so he has one day back, to provide a written  
22 statement or -- from Mr. Espinoza as to the timeline.  
23 Strike that. Redo.

24 I'm going to order you to get from  
25 Mr. Espinoza an e-mail, a written timeline by Tuesday

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1 the 15th.

2 MR. TOSTRUD: Including the start date?

3 THE SPECIAL MASTER: Which should include,  
4 but not be limited to, the start date for the purposes  
5 of complete and total specificity, which I understand  
6 the need from Plaintiffs to have that included.

7 Okay. Now, let's go through this TIFF/PDF  
8 discussion on OCR.

9 Do you want TIFFs?

10 MR. FORREST: Yes.

11 THE SPECIAL MASTER: I want to be clear that  
12 if -- let's go off the record for a second.

13 (OFF RECORD.)

14 THE SPECIAL MASTER: On the record.

15 There is a litany of things to be done. I'm  
16 going to have to issue a formal order based on the  
17 last two days of hearings. I am going to encourage  
18 both sides to provide me any additional language or  
19 thoughts or anything they would like to see in such an  
20 order. Please provide me such language. You'll have  
21 48 hours to get me the language with attachments.

22 Okay? Are we -- does this -- any questions?

23 MR. O'MARA: When do we get the dirty copy?

24 THE SPECIAL MASTER: I'll make it easy.  
25 We'll do it on Thursday.

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1 (OFF RECORD.)

2 THE SPECIAL MASTER: So then you'll have by  
3 Thursday, end of business, because I've got to turn  
4 around from that and work on an order myself that I  
5 then have to send to the Judge.

6 So that's that.

7 With the other -- and in my order I will  
8 have -- I have actually reviewed all of the things  
9 that need to go outstanding, but I welcome from you  
10 anything as well.

11 As to face-to-face hearings, I am going to  
12 suggest the 24th and 25th.

13 MS. WITTY: UMC's counsel is going to  
14 politely request different dates.

15 THE SPECIAL MASTER: For both of them?

16 MR. GODINO: How about the -- can we make it  
17 earlier maybe, on the 21st?

18 THE SPECIAL MASTER: The 21st, 22nd can work.

19 MR. TOSTRUD: That works for Plaintiffs'  
20 counsel.

21 MR. GODINO: Monday, Tuesday.

22 THE SPECIAL MASTER: But you guys will be in  
23 the middle of producing. So let's do the 22nd. The  
24 production will be pushed out -- when are you guys  
25 receiving the first production?

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1 MR. PIXLEY: The 22nd, 10:30, unless there is  
2 a FedEx exception report.

3 THE SPECIAL MASTER: Unless there's a FedEx  
4 strike; correct.

5 MS. WITTY: Don't say that.

6 THE SPECIAL MASTER: We will meet at 10:30 on  
7 the 22nd. Prepare to go late. We will have a phone  
8 hearing this Thursday at four o'clock. By that time,  
9 you will have circulated your list of -- from the  
10 custodian interviews.

11 MS. WITTY: Four o'clock.

12 MS. FOLEY: Yes.

13 THE SPECIAL MASTER: The custodial interview  
14 will be circulating.

15 MS. WITTY: And on the 22nd, will that be  
16 here?

17 THE SPECIAL MASTER: 10:30.

18 MS. FOLEY: 10:30 a.m. here?

19 THE SPECIAL MASTER: Yes. And we'll run  
20 late.

21 MS. FOLEY: Are we required to bring persons  
22 from UMC with us?

23 THE SPECIAL MASTER: Oh, yes. They're going  
24 to be here.

25 MS. WITTY: You want the CEO; the CIO;

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1 Mr. Espinoza; similarly, a court reporter?

2 THE SPECIAL MASTER: Yes.

3 MS. WITTY: Same setup?

4 THE SPECIAL MASTER: Yes. And can you let  
5 them know the reasons for them being called before me.

6 Also, let's schedule another hearing, just to  
7 be on the safe side, for Tuesday, the 15th.

8 MS. FOLEY: Are we bringing our tech people  
9 on the 22nd?

10 THE SPECIAL MASTER: If there are no  
11 problems, no. But if there are problems, yes.

12 MR. TOSTRUD: Phone on the 15th or in person?

13 THE SPECIAL MASTER: Phone.

14 I would keep it open. Their CIO might want  
15 them to be here because I will be asking him  
16 questions.

17 MR. TOSTRUD: I'm sorry. We have a phone  
18 hearing on Tuesday, the 15th?

19 THE SPECIAL MASTER: Yes. I was going to  
20 suggest that we have -- just to slot it. If we don't  
21 need it, we won't. But we have everybody here.  
22 Again, would four o'clock work?

23 MR. TOSTRUD: Four p.m. Pacific?

24 THE SPECIAL MASTER: Yes. And each hearing  
25 will go for two hours. All phone hearings will be two

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1 hours, with a break in an hour for five minutes for  
2 the restroom break.

3 Off the record.

4 (OFF RECORD.)

5 THE SPECIAL MASTER: On the record here.

6 My goal is that production will be either --  
7 all ESI production will be coming to a close by May  
8 30th. So it will be a busy month of May for privilege  
9 reviews and lot of conversations and me making lots of  
10 rulings around all of those issues as they arise, but  
11 I fully expect ESI to be done by the 30th.

12 I will, also my goal being, is that by the  
13 first week of June, provide to the Court my  
14 recommendations as to the other issues that have been  
15 ongoing as they've arisen.

16 You can let the senior executive team know  
17 when they are appearing before me that I fully expect  
18 to understand how the litigation hold notices were not  
19 pushed out to the key, critical individuals within  
20 their organization.

21 I also expect a detailed explanation as to  
22 why UMC counsel has not been in receipt of all of the  
23 information that is necessary for them to do their  
24 job. And clearly, they have very technical and  
25 skilled individuals at doing the work, so what is the

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1 disconnect. And that will be the focus of some  
2 portion of our discussion.

3 In addition to, we will cover and discuss  
4 with the custodians that do appear their custodial  
5 interviews and get any outstanding questions that we  
6 may have about dummy terminals or whatever answered by  
7 those individuals --

8 MS. FOLEY: Webmail.

9 THE SPECIAL MASTER: -- webmail and others.

10 I -- also, we will go through everything.

11 As to the iPhone, iPad, other situation, I  
12 will be issuing -- I will be expecting to receive data  
13 from UMC as to the basics using those search terms,  
14 and then also if you want to do a review of those  
15 search -- but let me make this very clear.

16 If there is a single e-mail message that  
17 comes from any one of those custodians that says "sent  
18 from iPad," "sent from iPhone," anything, "sent from  
19 Android," we're going -- that phone is getting imaged.  
20 Okay? Or device or tablet.

21 MS. FOLEY: And no upgrades, yes.

22 THE SPECIAL MASTER: No upgrades at all until  
23 this is resolved for any of their personal cell phones  
24 or mobile devices based on my initial quick check of  
25 the data. Okay? Any further questions?



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1 MR. TOSTRUD: No, sir.

2 THE SPECIAL MASTER: All right. Thank you  
3 all very much for your time.

4 Off the record.

5 (The proceedings adjourned at 5:33 p.m.)

6

7 \* \* \* \* \*

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I, the undersigned, an RPR, CRR, and  
Certified Shorthand Reporter of the States of Nevada  
and California, do hereby certify:

7

8

9

10

11

12

That the foregoing proceedings were taken  
before me at the time and place herein set forth; that  
a record of the proceedings was made by me using  
machine shorthand which was thereafter transcribed  
under my direction; that the foregoing transcript is a  
true record of the proceedings held.

13

14

15

I further certify I am neither financially  
interested in the action nor a relative or employee  
of any attorney or party to this action.

16

17

IN WITNESS WHEREOF, I have this date  
subscribed my name.

18

Dated: April 11, 2014

19

20


21

22

23

24

25

  
JANET C. TRIMMER  
OCR No. 864

# Exhibit C

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(Telephonic)

Page 1

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA  
3 UNCERTIFIED ROUGH DRAFT TRANSCRIPT  
4  
5  
6 DANIEL SMALL, CAROLYN SMALL, )  
WILLIAM CURTIN, DAVID COHEN, )  
7 LANETTE LAWRENCE, and LOUISE )  
COLLARD, Individually, and on )  
8 Behalf of All Other Persons )  
Similarly Situated, ) Case No.  
9 )  
Plaintiff, ) 2:13-cv-0298-APG-PAL  
10 )  
vs. )  
11 )  
UNIVERSITY MEDICAL CENTER OF )  
12 SOUTHERN NEVADA, )  
13 Defendant. )  
\_\_\_\_\_ )

14  
15 UNCERTIFIED ROUGH DRAFT TRANSCRIPT  
16 REPORTER'S TRANSCRIPT OF SPECIAL MASTER HEARING  
17 HEARD TELEPHONICALLY BEFORE  
18 SPECIAL MASTER DANIEL GARRIE  
19 Taken on Thursday, April 10, 2014  
20 At 4:04 p.m.  
21  
22 Taken at the Law Offices of:  
23 Lewis Brisbois Bisgaard & Smith, LLP  
6385 South Rainbow Boulevard, Suite 600  
Las Vegas, Nevada  
24  
25 Reported By: Gale Salerno, RMR, CCR No. 542

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19 cayla.witty@lewisbrisbois.com  
20

21 Telephonically, Also Present:

22 DOUGLAS E. FORREST, ESQUIRE, ILS  
MR. BRUCE PIXLEY  
23 MR. JOSEPH EDMONDSON

24 EXHIBITS

25 (None were offered.)

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1 P-R-O-C-E-E-D-I-N-G-S

2 April 10, 2014

3 4:04 p.m.

4 - - -

5 SPECIAL MASTER GARRIE: This is Special  
6 Master Garrie. We're holding the hearing -- someone  
7 just join?

8 This is Special Master Garrie. We're  
9 holding a hearing over the phone today.

10 I'm going to dial in from a land line. So  
11 I'll be right back.

12 (A discussion was held off the record.)

13 SPECIAL MASTER GARRIE: Without further  
14 ado, if you parties can hear me, I would like to  
15 first request that we discuss search terms.

16 Counsel for UMC, can you please state your  
17 position for the record?

18 MS. WITTY: Yes. This is Cayla speaking.

19 We submitted a list of mobile device search  
20 terms, including iPhone, iPad, Blackberry, Blackberry  
21 Curve, Android, and Windows phone, as a singular  
22 term, as well as the phrase, within quotations, Sent  
23 From My, which we believe would capture any other  
24 variations, such as Smartphone or other devices that  
25 were not specifically listed. And to use those terms

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1 to search for e-mails that came from a UMC custodian  
2 from a mobile device using their UMC e-mail.

3 Initially, our request was to also limit  
4 the search to those UMC custodians' e-mails in the  
5 "from" field. However, after Special Master Garrie's  
6 e-mail from last night, we understand why the  
7 restriction to the "from" field had been negated.

8 SPECIAL MASTER GARRIE: Perfect. Thank  
9 you, Counsel. This is Special Master Garrie.

10 Counsel for plaintiffs, do you have any  
11 objections you would like to raise?

12 MR. GODINO: This is Marc Godino. No,  
13 that's acceptable.

14 SPECIAL MASTER GARRIE: And the date  
15 ranges, June 2008 to present, that's acceptable to  
16 all parties?

17 MR. GODINO: Those dates are acceptable.

18 SPECIAL MASTER GARRIE: Counsel for UMC?

19 MS. WITTY: We're not opposed to  
20 information that's created during those time periods.

21 Joe, was there something specifically that  
22 you wanted to mention with regard to the date range?

23 MR. EDMONDSON: This is Joe. I had wanted  
24 to clarify whether we were filtering on date created,  
25 date modified and date accessed, particularly in the

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1 network shares because they did replace the server in  
2 2011.

3 The access time for pretty much every file  
4 within the network share is going to fall within  
5 those dates.

6 SPECIAL MASTER GARRIE: Can you please  
7 provide me a statement in writing explaining that in  
8 further detail so I understand what network file  
9 share you're referring to?

10 Because -- this is Special Master Garrie,  
11 UMC has a multitude of file shares, so without having  
12 more specific detail, it's very hard for me to say  
13 one way or the other that this is the user network's  
14 file share, is it the share -- I mean, I need a  
15 great deal more detail before I would grant any  
16 modification.

17 MR. EDMONDSON: This is Joe. Yeah, we can  
18 definitely provide that. And I don't see any issue  
19 with the June 2008 being used for e-mails for that  
20 filter.

21 SPECIAL MASTER GARRIE: My concern is -- I  
22 would be amenable to filtering it; however, what in  
23 order for -- I'm going to deny your request right now  
24 as to modifying it. I want created access or  
25 modified, because I don't know what server you're



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1 referring to. So it makes me -- I can't at this  
2 stage limit anything without being provided a great  
3 deal more technical information, and given that time  
4 is of the essence, and that information is not  
5 available, I'm going to request that you run the  
6 search as is, because effectively what you're telling  
7 me, as I understand it, is that all of the actual  
8 metadata date applied on whatever file server or file  
9 share server have been reset, but I don't have any  
10 other context than that.

11 MS. WITTY: This is Counsel Witty. That  
12 shouldn't be an issue with the initial custodians for  
13 the data that was pulled for John Espinoza, James  
14 Mumford and Doug Spring for the initial searches  
15 through their PSTs and the other loose files.

16 When we get to the Q-drive, that's all of  
17 the common drives that would be a part of the shared  
18 network, that's when that date will become an issue.

19 But as we understand it, that is later in  
20 the rolling production schedule, so we'll make sure  
21 to have that detailed information to you.

22 SPECIAL MASTER GARRIE: And also, please --  
23 counsel for the plaintiffs, can you please add to --  
24 or actually counsel for UMC, can you just add to our  
25 discussion topic list on the 22nd, if there had been

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1 these sorts of issues, that an affidavit from someone  
2 at UMC explaining what exactly happened and what  
3 exactly is stored on these servers?

4 MS. WITTY: Yes.

5 SPECIAL MASTER GARRIE: And without having  
6 more detail, there are quite a few questions that  
7 need to be clarified and answered.

8 And for purposes of the record, the  
9 question would include, but not be limited, the  
10 network file share for the user directory, or is it  
11 for the groups? And if so, when as it migrated and  
12 who it impacted are other additional questions that  
13 we would be clarified.

14 With regards to the mobile search, let's  
15 just right now, the sixth custodian, let's get that  
16 moving. Because we're only talking about looking for  
17 mobile search right now. We're not doing anything  
18 else. Let's just go for this order.

19 Is that clear, counsel for UMC?

20 MS. WITTY: Yes.

21 SPECIAL MASTER GARRIE: I mean, and counsel  
22 for plaintiffs, any objections?

23 MR. GODINO: This is Marc Godino. I don't  
24 have any objections.

25 MR. FORREST: Douglas Forrest, ILS. No

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1 objections.

2 SPECIAL MASTER GARRIE: All right.

3 MR. TOSTRUD: Jon Tostrud, counsel for  
4 plaintiffs in Los Angeles. I just wanted to make it  
5 clear early on to the court reporter that we would  
6 like a dirty copy of this transcript. I mention that  
7 to you because sometimes it matters to the court  
8 reporter in terms of how fast people speak and how  
9 clearly they speak, but we would request a dirty copy  
10 to be available by tomorrow afternoon if possible.

11 THE COURT REPORTER: Thank you, counsel.  
12 You'll have it in the morning.

13 MR. TOSTRUD: Thank you.

14 SPECIAL MASTER GARRIE: Off the record.

15 (A discussion was held off the record.)

16 SPECIAL MASTER GARRIE: So all parties, we  
17 have resolved, as far as the issue, counsel for UMC,  
18 regarding the mobile search terms, correct?

19 MS. WITTY: This is Counsel Witty, yes.

20 SPECIAL MASTER GARRIE: And as to the  
21 protocol we're going to follow, correct?

22 MS. WITTY: With regard to those searches?

23 SPECIAL MASTER GARRIE: Yes.

24 MS. WITTY: Yes.

25 SPECIAL MASTER GARRIE: And Mr. Edmondson,

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1 you're aware that I'm going to log in and remotely  
2 review the results on or before 12:00 p.m. on the  
3 15th of April?

4 MR. EDMONDSON: This is Joe Edmondson.  
5 Yes.

6 SPECIAL MASTER GARRIE: And so what I  
7 expect when I log in is to be -- and you also, just  
8 for purposes of the record, notice that you're going  
9 to circulate screenshots of the search configuration,  
10 and allow me remote access just to observe the  
11 configuration before running searches?

12 MR. EDMONDSON: This is Joe. Yes.

13 SPECIAL MASTER GARRIE: So please shoot me  
14 an e-mail when it's ready to go, and I'll remotely  
15 view in using Team Viewer just to make sure it's set  
16 up properly. And circulate the snapshots,  
17 screenshots to all parties.

18 Okay. Moving forward. I would like to get  
19 to -- did counsel for UMC receive Dan Small's  
20 declaration?

21 MS. WITTY: This is Counsel Witty. Yes.

22 SPECIAL MASTER GARRIE: All right. You're  
23 aware --

24 MR. TOSTRUD: This is Jon Tostrud. I  
25 should note that Mr. Small indicated that there are

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1 multiple policy documents, similar type things,  
2 policies and procedures that exist in similar places  
3 on the intranet.

4 SPECIAL MASTER GARRIE: I do have some  
5 remarks to Dan Small's declaration for counsel for  
6 UMC.

7 Can you please confirm with UMC your  
8 client that -- the question is, is Dan Small a  
9 current -- he's currently an hourly employee at UMC,  
10 correct?

11 MR. GODINO: This is Marc Godino. Yes.

12 SPECIAL MASTER GARRIE: Okay. Because it  
13 says University Medical Center. I just wanted to  
14 make 100 percent certain.

15 And has counsel for UMC had a chance it  
16 review it?

17 MS. WITTY: This is Counsel Witty. We have  
18 reviewed the declaration, yes.

19 SPECIAL MASTER GARRIE: Do you have any  
20 questions about the declaration?

21 MS. WITTY: We will await your questions at  
22 this time.

23 SPECIAL MASTER GARRIE: Okay. I have  
24 questions, because in Dan Small's declaration, he  
25 does review or mention that additional such policies

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1 might exist on what I believe to be the intranet. Is  
2 that not correct?

3 MS. WITTY: This is Counsel Witty. That is  
4 how we understood it. And we are, as per Monday's  
5 Order, collecting those servers, preserving that  
6 information. And we can provide remote access to the  
7 Special Master as requested.

8 SPECIAL MASTER GARRIE: Okay. And I might  
9 request access, but my first simple question is: Can  
10 you get an affidavit from someone at UMC to make sure  
11 that we're talking about the same intranet?

12 MS. WITTY: Could you clarify, please?

13 SPECIAL MASTER GARRIE: Yes. So they're  
14 proposing a collection of the intranet, and intranet  
15 can have multiple servers, or there could be multiple  
16 intranets within a single organization.

17 MS. WITTY: Uh-huh.

18 SPECIAL MASTER GARRIE: I want to make sure  
19 that whoever is responsible at UMC for performing  
20 this collection is providing an affidavit as to what  
21 the intranet they're collecting from is, and/or that  
22 it is the only intranet or source of record.

23 Specifically because I want to make sure that the  
24 employee, Daniel Small's, statement that says I went  
25 to the policies and procedures on-line manual on the

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1 University Medical Center's intranet and typed an  
2 I-25 to view the newly revised policy, we're getting  
3 the proper servers and the right intranet, because  
4 he's not technical.

5 And I recognize that UMC -- counsel for UMC  
6 would benefit by making sure that -- and as well as  
7 the Court -- that the correct intranet server is  
8 being collected. And to do that I would request a  
9 affidavit from the person doing the collection.

10 MS. WITTY: Understood.

11 MR. TOSTRUD: This is Jon Tostrud for  
12 plaintiffs. Of course, if there are any documents  
13 that are responsive to our discovery requests, we  
14 expect that those would be produced.

15 SPECIAL MASTER GARRIE: That is noted for  
16 the record, and the prior hearing where I think  
17 Counsel Foley and Counsel Witty both agreed that they  
18 would be obviously amending the date, as counsel for  
19 UMC has been constantly diligent, it is apparent that  
20 UMC failed to collect the documents in the first  
21 place.

22 MR. TOSTRUD: Okay.

23 SPECIAL MASTER GARRIE: Is that accurate,  
24 counsel for UMC?

25 MS. WITTY: This is Counsel Witty. Yes.

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1 That is how we understand our obligation.

2 SPECIAL MASTER GARRIE: And to date,  
3 there's been no collection of the intranet, correct?

4 MS. WITTY: This is Counsel Witty.  
5 Correct. It is currently under process.

6 SPECIAL MASTER GARRIE: But to be clear,  
7 there's no way plaintiff could have -- you didn't  
8 have this document prior, so that -- if you had such  
9 a document as the one attached as record retention  
10 disposal, you would have turned that over, correct?

11 MS. WITTY: Yes.

12 SPECIAL MASTER GARRIE: Okay. So I don't  
13 think there's any question.

14 Plaintiff, any other questions you have  
15 there?

16 MR. TOSTRUD: No, sir.

17 SPECIAL MASTER GARRIE: Counsel for UMC,  
18 now that I have an understanding from Daniel Small  
19 where actually it was, I want to point out a couple  
20 of key shared directories that you want to the  
21 collect from.

22 If you turn to page 4 of Exhibit A. Tell  
23 me when you're there, counsel for UMC.

24 MS. WITTY: Give me just a moment.

25 SPECIAL MASTER GARRIE: Okay.



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1 MS. FOLEY: We're having a little trouble  
2 with our WiFi, your Honor. Would you mind just kind  
3 of reading the information to us that's in front of  
4 you.

5 SPECIAL MASTER GARRIE: Specifically, I'll  
6 read the following: It's Appendix A of record  
7 retention, page 4 of o4.

8 And it says Retention. There's a column,  
9 and that column, the first -- the third row, it says  
10 how long they keep it for original schedules, three  
11 years. And it says it will be maintained in the  
12 nursing administration office.

13 They say the original to be scanned  
14 electronically and saved on a Q-drive under nursing  
15 administration.

16 I would like counsel for UMC to make sure  
17 that when they perform the collection of the network  
18 file shares, that they collect the folder nursing  
19 administration.

20 MS. FOLEY: From the Q-drive, correct?

21 SPECIAL MASTER GARRIE: From the Q-drive,  
22 that is correct.

23 MS. FOLEY: Thank you.

24 SPECIAL MASTER GARRIE: I would also like  
25 counsel for UMC, based on the testimony we took on

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1 Friday, when they said nothing will be stored on  
2 site, if you look at descriptions of the said row, it  
3 says staff assignment sheets will be maintained by  
4 the clinical managers. It doesn't specify where  
5 they're keeping them.

6 Can you please clarify as to ensure that  
7 that -- because there's no data map, and there's no  
8 way I can actually reference any sort of document  
9 repository, it is not clear to me at this time where  
10 the staff assignment sheets are actually being  
11 maintained by the clinic managers.

12 So obviously, I would assume -- or the  
13 daily staffing reports as well, may have relevant  
14 information at this time.

15 Is that -- and I would like counsel for UMC  
16 to inquire with their client where these records are  
17 kept and make sure that they are included.

18 Is that clear?

19 MS. FOLEY: Yes. This is Counsel Foley.

20 SPECIAL MASTER GARRIE: Okay. And my next  
21 question is, for my edification, what are acuity  
22 reports?

23 MS. WITTY: Could you say that again?

24 SPECIAL MASTER GARRIE: What are acuity  
25 reports, a-c-u-i-t-y?

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1 MS. WITTY: I could not tell you.

2 SPECIAL MASTER GARRIE: Okay. Do -- well,  
3 can you inquire and confirm that they are not at all  
4 related to this litigation?

5 MS. WITTY: Absolutely.

6 SPECIAL MASTER GARRIE: And then with that  
7 in mind, also if they do end up being related to the  
8 litigation, inquire as to what the grasp database is.

9 MS. WITTY: Yes.

10 MR. GODINO: This is Marc Godino. I would  
11 just like to add to that, if they're going to  
12 determine whether the acuity reports are relevant,  
13 that they provide a description of what those reports  
14 are so that we can weigh in on the relevancy, and  
15 maybe even provide a copy of one so we can review it.

16 SPECIAL MASTER GARRIE: Let's first make  
17 sure --

18 MS. WITTY: Let us verify -- this is  
19 Counsel Witty. Let us verify this information for  
20 our own knowledge, and we will make sure to address  
21 that properly with the Court.

22 SPECIAL MASTER GARRIE: Thank you.

23 Now, original department staff meeting  
24 minutes and nursing administration office, again, it  
25 says the original is to be scanned electronically and

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1 saved object the Q-drive under nursing  
2 administration. Just repeating the importance of  
3 that folder.

4 MS. WITTY: Yes.

5 SPECIAL MASTER GARRIE: Now, it says  
6 original department shared governance committee  
7 meeting minutes will be maintained by the clinical  
8 manager.

9 That's just taking it back again, not to  
10 the specific document, but I want you to confirm that  
11 these clinical managers are actually storing the  
12 documents.

13 MS. WITTY: Understood.

14 SPECIAL MASTER GARRIE: All right. And  
15 then can financial reports with relevant? It's sort  
16 of ambiguous, but the financial reports would be  
17 maintained by the managers, and it doesn't, again,  
18 say where they're storing them.

19 And I just want to make sure that counsel  
20 for UMC, if it is indeed relevant, that you identify  
21 where they're actually keeping them.

22 MS. WITTY: This is Counsel Witty. We  
23 understand.

24 MR. TOSTRUD: This is Jon Tostrud for  
25 plaintiffs. It's plaintiffs' position that those

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1 documents are absolutely 100 percent relevant, as we  
2 made clear to counsel in the past. And I believe  
3 this is actually the subject of the motion to compel,  
4 that documents relating to financial and management  
5 reports, including labor analysis, is absolutely  
6 relevant to the case.

7 MS. FOLEY: When they are including labor  
8 analysis, correct?

9 MR. GODINO: No, not just when they're  
10 including labor analysis, but --

11 MS. WITTY: This is Counsel Witty. Again,  
12 with the regard to the information that we do not  
13 have in front of us, we will review it and address as  
14 appropriate.

15 SPECIAL MASTER GARRIE: This is Special  
16 Master Garrie. So would I like to happen is counsel  
17 for UMC, why don't you first get what these records  
18 are. Figure out if -- make sure that you collect  
19 them. You'll run the search terms, and obviously if  
20 they're responsive to -- directly responsive to any  
21 document requests, I assume you will act accordingly.

22 And so I would note your statement, counsel  
23 for the plaintiffs for the record. And I would like  
24 to proceed with what I just set out. And if  
25 necessary downstream, once counsel for UMC has a

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1 better grasp of what they are, we can, if necessary  
2 revisit it on April 22nd. Okay?

3 MR. TOSTRUD: This is Jon Tostrud. Fair  
4 enough. Thank you.

5 MS. WITTY: This is Counsel Witty.  
6 Understood.

7 SPECIAL MASTER GARRIE: Now, I was reading  
8 through the policy. Did counsel for UMC have a  
9 chance to read through this?

10 MS. WITTY: We've read through it briefly.

11 MR. GODINO: This is Marc Godino. Can you  
12 just clarify what policy you're referring to?

13 SPECIAL MASTER GARRIE: Exhibit A, the  
14 record retention and disposal, page 2 of 4.

15 I would point out for counsel, and for my  
16 own edification, I found it very insightful that they  
17 have a legal hold.

18 MS. FOLEY: So noted. This is Margaret.

19 SPECIAL MASTER GARRIE: And the last --  
20 that was all I had for that.

21 I had no other issues or questions.

22 Daniel Small's -- Counsel Foley, would the  
23 affidavit provide sufficient clarity for you? For  
24 the declaration, my apologies.

25 MS. FOLEY: Yes. Yes, it does, thank you.

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1           SPECIAL MASTER GARRIE: I would like to  
2 quickly -- that's a relative term.

3           I also want -- on Tuesday, April 8th,  
4 counsel for UMC issued an additional e-mail. I don't  
5 know if you received it. I asked you to submit a  
6 list of user network share mappings.

7           MS. WITTY: Yes. We understood that you  
8 wanted those by April 14th.

9           SPECIAL MASTER GARRIE: When I put in some  
10 dates -- if you read through it closely, some of it  
11 have different dates. I sent the e-mail to you on  
12 Tuesday, April 8th, at 12:57 p.m.

13          MS. WITTY: And what is your request for  
14 that -- from that information?

15          SPECIAL MASTER GARRIE: I just want to make  
16 sure you received it.

17          MS. WITTY: Oh, yes. I thought we had  
18 confirmed that by e-mail. I apologize.

19          SPECIAL MASTER GARRIE: No apologies. I  
20 just wanted to make sure you got it.

21          Perfect. Now, I want to go over  
22 plaintiff -- I'm going to let counsel for UMC go  
23 through their notes, and then they'll go through  
24 their notes, and then I have some general comments.

25          Is that acceptable to everyone?

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1 MS. FOLEY: Yes, it is for UMC.

2 SPECIAL MASTER GARRIE: UMC, ball in is in  
3 your court.

4 MS. WITTY: The very first thing, and  
5 again, I apologize, these were done after the request  
6 to type them up and to provide them for all.

7 The very first thing with regard to  
8 verification of the PSTs for Mr. Espinoza, in light  
9 of the recopying to include both the April 2003 and  
10 August 2003 collections, we wanted to verify exactly  
11 how you wanted that chain of custody to be  
12 established.

13 Deny Schaibley, who conducted both of those  
14 collections, and is making the logical file copies,  
15 is fully prepared to explain. We just wanted to make  
16 sure that we had -- that the information that you  
17 need is contained within those documents.

18 SPECIAL MASTER GARRIE: So the first thing  
19 that I need to be -- certainly. So I'll offer some  
20 clarification, and I believe some of my e-mails  
21 provided additional. And I will be issuing an order  
22 hopefully by end of day tomorrow pursuant to the  
23 request of the Court, summarizing everything and  
24 including most, if not all, of the orders that we  
25 have gone over.



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1           What must be included in a chain of custody  
2   is what was collected and how it was collected, when  
3   it was collected, who collected it. And I need that  
4   for both the April and the August.

5           And I need to know if there were personal  
6   computers where the collection was done. Meaning an  
7   actual physical device, or if they were collected  
8   from a network file server. I need to -- and the  
9   chain of custody to identify the source of the  
10   evidenced items that were collected for each  
11   custodian.

12           And if you collected a network file share  
13   during that time, which I didn't read, if that did  
14   occur, that you will create a separate chain of  
15   custody saying you collected a network file share for  
16   these individuals.

17           MS. WITTY: Understood.

18           SPECIAL MASTER GARRIE: Help you out?

19           MS. WITTY: Yes. Thank you.

20           SPECIAL MASTER GARRIE: Now, I would still  
21   like -- I believe that Mr. Edmondson needs to provide  
22   an affidavit clarifying his scan and repair findings.

23           And with regards to screenshot on server,  
24   Counsel Witty can you clarify what you mean? Because  
25   I'm not sure -- I know what I meant, but I'm not sure

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1 I understood your shorthand.

2 MS. WITTY: I'm not sure either. And  
3 that's partially why we wanted to clarify.

4 SPECIAL MASTER GARRIE: Okay. So what I  
5 would like to know, what I would like is a screenshot  
6 of the PSTs collected for John Espinoza to be  
7 included.

8 Specifically when I searched through the  
9 spreadsheets that were provided to me, I wasn't able  
10 to identify -- the PSTs and OSTs, I wasn't able to  
11 find a single archived PST or OST file.

12 And I need that -- I need a screenshot of  
13 what was actually collected for John Espinoza,  
14 because based on what I have had reviewed, and maybe  
15 Mr. Edmondson, you can clarify this further, but  
16 there's a discrepancy between the scanner repaired  
17 statement and what was actually -- I was actually  
18 able to discern.

19 MR. EDMONDSON: This is Joe Edmondson.  
20 Yes, I have submitted a preliminary version of that  
21 correction to Counsel Witty. There were actually two  
22 PSTs and no OSTs. I had accidentally typed the table  
23 incorrectly.

24 The two PSTs, for clarification, appear to  
25 be created from the export when they manually

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1 exported the PSTs they were not part of the copy  
2 script.

3 SPECIAL MASTER GARRIE: So part of the live  
4 collection, so to speak.

5 MR. EDMONDSON: Correct.

6 SPECIAL MASTER GARRIE: I need you to  
7 detail that in some sort of affidavit, and provide a  
8 screenshot giving your entire representation.

9 MR. EDMONDSON: This is Joe. Understood.

10 SPECIAL MASTER GARRIE: So counsel, have we  
11 cleared that up?

12 MS. WITTY: Yes. Thank you.

13 SPECIAL MASTER GARRIE: I'll turn it back  
14 over to you.

15 MS. WITTY: And this is Counsel Witty.  
16 Again for more my understanding, the mounting of the  
17 files that was performed during the hearing on  
18 Monday, does that -- as they were able to be mounted,  
19 does that also now require us to still split the  
20 files to do the search?

21 SPECIAL MASTER GARRIE: No.

22 MS. WITTY: That's what I understood, but I  
23 didn't want to put that in my notes to say that that  
24 didn't have to happen.

25 SPECIAL MASTER GARRIE: That's fine.

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1 MS. WITTY: But everything --

2 SPECIAL MASTER GARRIE: I need counsel --

3 MS. WITTY: That's what I had understood

4 with regard to what Joe had said, that all the

5 processing would go through EnCase 7. And that

6 again, that the chain of custody would show all of

7 that processing information, how it was collected,

8 when, who, what, all of that.

9 The next topic that came up was the

10 encrypted files.

11 SPECIAL MASTER GARRIE: But counsel, just

12 really quickly, I want to offer two points of

13 clarification. During the hearing, we set out how he

14 was -- because he had issues with the PST files for

15 Ms. -- I'm blanking on her name.

16 MS. WITTY: Ms. Panzeri.

17 SPECIAL MASTER GARRIE: Ms. Panzeri. He

18 was to search processors we set forth for actually

19 searching those specific PSTs, and I request that he

20 provide a screenshot of the configurations for his

21 administering those searches so I can verify that it

22 was, indeed, run as we set forth and defined during

23 the hearing.

24 So we don't have to trim and split, but we

25 do need to follow the protocol we set forth.

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1 Mr. Edmondson, does this make sense to you?

2 MR. EDMONDSON: This is Joe Edmondson.

3 Yes, I understand.

4 SPECIAL MASTER GARRIE: So Counsel Witty, I  
5 just wanted to clarify that and your forensic expert  
6 understood those records.

7 MS. WITTY: Yes.

8 SPECIAL MASTER GARRIE: I do want also --  
9 we'll get to plaintiffs as well, so we'll keep going  
10 with yours.

11 The hash value verification requested,  
12 plaintiff -- we'll clarify it there. Let's just turn  
13 it back to you. You were going to talk about  
14 encryption.

15 MS. WITTY: Yes. And Joe, feel free to  
16 speak up with regard to your understanding of this.

17 The encrypted files that have been  
18 identified, from what I understand, are significantly  
19 older than the relevant time period. They haven't  
20 been modified since 2005.

21 But because of the -- or because of the  
22 access dates that would be included in the search,  
23 they would fall under that because of the transfer of  
24 the home files, I believe.

25 SPECIAL MASTER GARRIE: Joe, Mr. Edmondson,

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1 can you please speak up and just talk in technical  
2 terms and clarify, please.

3 MR. EDMONDSON: Yes. This is Joe. If I  
4 could clarify: The specific files that we identified  
5 that Encase believed were encrypted Word Perfect  
6 files, all but four of them, which were, in fact,  
7 password protected, Word Perfect, Passware was able  
8 to process them. All the rest of those files were  
9 actually in old Novell GroupWise post office. And  
10 the files only contained e-mails from 2000 to 2002.  
11 So I believe that puts them out of scope.

12 SPECIAL MASTER GARRIE: Can you provide me  
13 an affidavit with screenshots, or I can log in  
14 remotely, but if you can submit an affidavit with  
15 screenshots verifying that, and that's fine.

16 What about the DMG files?

17 MR. EDMONDSON: This is Joe. The DMG files  
18 I have not attempted to mount on a Mac at this point.

19 SPECIAL MASTER GARRIE: So as to the next  
20 step, I would like counsel, or Mr. Edmondson, you  
21 provide an affidavit setting forth with screenshots  
22 what you just stated. And I will at that point then  
23 find with regards to whatever file the -- with  
24 regards to ones that are out of date. All the other  
25 files that are within date, I would like you to

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1 provide, counsel for UMC, and the details around  
2 those files so we can -- and by 4/11 it would be good  
3 to have a solution of those files, if any do exist.

4 Because I don't actually understand.  
5 Because what I understand is 779 were encrypted.

6 (Mr. David O'Mara joined the hearing.)

7 SPECIAL MASTER GARRIE: And I require in  
8 writing further clarification of your statement.

9 MR. EDMONDSON: Understood.

10 SPECIAL MASTER GARRIE: And then what about  
11 the -- what other files besides the Word Perfect  
12 files were encrypted?

13 MR. EDMONDSON: This is Joe Edmondson. All  
14 of the other files exported were Word documents and  
15 Excels, or other document-type or office-type files,  
16 which could easily be broken by the Passware password  
17 recovery software.

18 SPECIAL MASTER GARRIE: I'll need a list  
19 verifying file names and that they were broken.

20 So as I understand it, what about the DMG  
21 files? Because you said all the files. Does that  
22 include all the DMG files or not?

23 MR. EDMONDSON: It does not include the DMG  
24 files, as they were Mac files. This is Joe. Not  
25 standard office files. I will melt them on a Mac and

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1 provide you with the results.

2 SPECIAL MASTER GARRIE: Counsel for  
3 plaintiffs, do you have anything to say here?

4 MR. TOSTRUD: This is Jon Tostrud. I think  
5 we would like to sort of turn this discussion over to  
6 our ESI experts, typically Doug and/or Bruce, if they  
7 have any comments.

8 SPECIAL MASTER GARRIE: Certainly. Any  
9 comments?

10 MR. PIXLEY: This is Bruce. I do not have  
11 any comments right now. I'm listening to what's  
12 being set, but I don't have any comments to what's  
13 being said.

14 MR. FORREST: This is Doug, and I also do  
15 not have any comments at this point.

16 SPECIAL MASTER GARRIE: All right. First  
17 page, and then I would like to then go to plaintiffs'  
18 one page transcript summary, and then we'll go back  
19 to yours. We'll go back and forth.

20 MS. WITTY: Okay. Really, for the rest of  
21 that first page, you requested server mappings to be  
22 completed by 4/14. I apologize for my shorthand. I  
23 understood that to be the shared drives and who had  
24 access to what. That is underway.

25 And similarly, the updated chain of custody



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1 will follow for those collections in production.

2           Regarding the Blackberry issues, this was  
3 just my understanding and tracking of the discussion  
4 that was based on the server configuration for the  
5 Blackberry exchange server.

6           I welcome anyone's comments if there is  
7 something I have incorrect, or they don't understand,  
8 but that would be something I have to take back to  
9 UMC to clarify.

10           SPECIAL MASTER GARRIE: Okay. Well, let's  
11 go through with plaintiffs, if you have anything you  
12 would like to add to the Blackberry comment, please  
13 feel free to add.

14           At this point I would like to turn to the  
15 material provided by Mr. Tostrud to the Special  
16 Master, myself, with a chart outlining the duties of  
17 the parties pursuant to the hearing of the Special  
18 Master attended at 9:00 a.m.

19           I would like to go through page one of  
20 that, because I think it lines up relative to counsel  
21 for UMC's first page.

22           Plaintiffs, I'll turn it over to you.

23           MR. GODINO: Just give us a second while we  
24 pull the document up.

25           MR. TOSTRUD: This is Jon Tostrud. Do you

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1 have any specific questions, Special Master Garrie?

2 Or would you like us to just run through --

3 SPECIAL MASTER GARRIE: Just run it  
4 through.

5 MR. TOSTRUD: Run through the issues that  
6 we identified?

7 SPECIAL MASTER GARRIE: Counselor, we can  
8 do this. Counsel for UMC, did you get a chance to  
9 review it?

10 MS. WITTY: Yes.

11 SPECIAL MASTER GARRIE: Did you have any  
12 questions or concerns? I thought it was fairly  
13 accurate. I had three comments, but do you have any  
14 comments with regards to page one?

15 MS. WITTY: So the document that I have  
16 does not clearly designate between pages, but I do  
17 not -- what I have reviewed, I do not have any.

18 SPECIAL MASTER GARRIE: Okay. Well, then  
19 perfect. I'm going to take a stab.

20 Is anybody from UMC's technical team on the  
21 phone?

22 MS. WITTY: Dean was not available for the  
23 call today, so there is not anyone specifically from  
24 UMC.

25 SPECIAL MASTER GARRIE: Okay. I believe,

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1 and I could be wrong, and editing my hearing notes  
2 rather extensively, but I do not believe that they  
3 actually have tape.

4 MS. WITTY: Correct. They stated that  
5 there was only hard discs.

6 SPECIAL MASTER GARRIE: All right. So it  
7 says, and Counsel Tostrud, this is a copy of the  
8 tape?

9 MR. TOSTRUD: Yeah --

10 MS. WITTY: I think tape was used as a  
11 shorthand.

12 SPECIAL MASTER GARRIE: Okay.

13 MS. WITTY: After it was explained.

14 SPECIAL MASTER GARRIE: Okay. Well, let's  
15 correct to today. It that applies to Counsel Witty's  
16 summary as well.

17 I just want to make sure all parties  
18 understand, they don't use tape, they use discs.

19 MR. TOSTRUD: That's fine.

20 SPECIAL MASTER GARRIE: Plaintiff want to  
21 point anything out here?

22 MR. TOSTRUD: Yes. I would just point out  
23 that at the third line from the bottom, which starts  
24 at page 112, lines 10 through 21, I think the  
25 transcript indicated that the CEO and the CIO were to

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1 be available for the next hearing. I would simply  
2 amend that to include the chief of human resources,  
3 as well.

4 SPECIAL MASTER GARRIE: I thought he was  
5 added.

6 MR. TOSTRUD: Yes, he was. But that may  
7 come later. But I just wanted to point out that at  
8 this point in our summary of the transcript, it  
9 didn't include Mr. Espinoza. But obviously, later on  
10 in the transcript, I think your Honor made that  
11 clear.

12 MS. FOLEY: Yes, this is Counsel Foley. We  
13 have him on that list.

14 SPECIAL MASTER GARRIE: I'm still -- I  
15 haven't gotten the file type list. I know  
16 plaintiffs -- I didn't get it.

17 MS. WITTY: This is Counsel Witty. That  
18 was my oversight.

19 SPECIAL MASTER GARRIE: I would be  
20 interested to know what they are.

21 Does counsel, I was hoping to have a look  
22 at that. That was a topic of what I was hoping to go  
23 over today, but we might have to save it for the  
24 15th.

25 I would like both sides, once I've received

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1 it and had a chance to review it, to be prepared to  
2 discuss it, and whether or not any -- whether the  
3 plaintiffs are amenable to eliminating certain file  
4 types. I haven't seen it, so I can't really engage  
5 in a conversation.

6 MS. FOLEY: Okay. We understand.

7 MR. GODINO: This is Marc Godino.

8 Cayla, did you provide that to us?

9 MS. WITTY: It was sent to everyone on the  
10 distribution list. But due to -- and Special Master  
11 Garrie, this is the same reason that the zip file  
12 came through empty. For some reason our e-mail  
13 system would not allow me to transfer that document.  
14 It was an issue with security coming from UMC to our  
15 firm's e-mail.

16 I'm going to rectify that as soon as  
17 possible, hopefully while we're still on this call.

18 SPECIAL MASTER GARRIE: I received an  
19 e-mail from Dean.

20 MS. WITTY: Yes, directly from him.

21 SPECIAL MASTER GARRIE: Yeah. Does that  
22 have that in there? Because I didn't see that in  
23 there. I didn't know where to look.

24 MS. WITTY: No. The file list would have  
25 come from Joe. And it's purely -- I apologize, it's

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1 our law firm's security issues that are creating  
2 that.

3 SPECIAL MASTER GARRIE: Okay. And the  
4 other -- sorry. Counsel for plaintiffs, it says  
5 define TS-1.

6 MR. TOSTRUD: Okay, yeah, we found that at  
7 229. I think that had to do with the document that  
8 we put in relating to, you know, one of the documents  
9 from Mr. Small. But I could go back to the full  
10 transcript. I think that was a request that perhaps  
11 your Honor had about defining TS-1.

12 SPECIAL MASTER GARRIE: I did. I just  
13 wanted to make sure that you're referring to the  
14 server references.

15 Maybe Mr. Pixley, is that what you intended  
16 and what you believe as well? Or Mr. Forrest?

17 MR. FORREST: I would have to go back to  
18 the transcript -- this is Mr. Forrest -- whether it  
19 related to the remote log-in capability. Exhibit 15.

20 SPECIAL MASTER GARRIE: I'm just looking  
21 right now.

22 Yeah, that's in response to your exhibit.

23 MR. FORREST: That's my recollection. And  
24 I think we -- I'm not sure that we ever got a clear  
25 explanation of the definition of that TS-1.

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1 SPECIAL MASTER GARRIE: I don't believe we  
2 did. So counsel for UMC, do you understand what's  
3 being requested?

4 MS. WITTY: The TS-1 server that was  
5 identified?

6 SPECIAL MASTER GARRIE: Yeah. We  
7 speculated in the hearing as to what it may apply to,  
8 but we don't actually know.

9 MS. WITTY: So you want to know what that  
10 actually connects to?

11 SPECIAL MASTER GARRIE: Yes.

12 MS. WITTY: Would you like that as well in  
13 an affidavit form with screenshot?

14 SPECIAL MASTER GARRIE: Yes. That would be  
15 very helpful. Again, if the client has a data map or  
16 something of the like, I'm more than amenable to  
17 taking that as well, if I can verify it.

18 Okay. Plaintiffs, I wanted to just clarify  
19 with regards to your duties, I want to make a  
20 revision to it. I'm not exactly sure how you'll be  
21 able to use the data recovery tools that you  
22 mentioned that were mentioned in 18 colon 8 dash 14.  
23 I think that was assigned to Mr. -- I believe that  
24 you're not -- Mr. Pixley, correct me if I'm wrong,  
25 but you don't have any of the evidence that was --

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1 OST files were in your possession, correct?

2 MR. PIXLEY: Correct.

3 SPECIAL MASTER GARRIE: So I'm just reading  
4 over my notes. I know there were a lot of them.

5 We need to amend that, and basically  
6 because the PST files are mountable, we don't need to  
7 do that. But for the purposes of clarification, the  
8 individual that would have been responsible for the  
9 activity would have been UMC and whoever they tasked  
10 with that duty.

11 MS. WITTY: This is Counsel Witty. Could  
12 you identify what line you're addressing?

13 SPECIAL MASTER GARRIE: 18 colon 8 dash 14.  
14 I believe Mr. Edmondson was the individual who was  
15 capable of doing it. Plaintiffs don't actually have  
16 any of the original evidence files --

17 MS. WITTY: Okay.

18 SPECIAL MASTER GARRIE: -- for UMC.

19 MR. TOSTRUD: This is Jon Tostrud. It's  
20 the first line, Cayla, under plaintiffs' duties.

21 MS. WITTY: I just saw that, thank you.

22 SPECIAL MASTER GARRIE: So I think there  
23 was some confusion there.

24 It's not necessary at this point for the  
25 repair tools to be run. But in the case that they do



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1 need to be run, Mr. Edmondson would be the individual  
2 responsible for doing it because he has the evidence  
3 items.

4 Is that clear counsel for UMC?

5 MS. WITTY: This is Counsel Witty. Yes.

6 SPECIAL MASTER GARRIE: Counsel for  
7 plaintiffs, do you acknowledge this?

8 MR. GODINO: Yes. This is Marc Godino.

9 SPECIAL MASTER GARRIE: And Mr. Pixley, do  
10 you have any reservations, or do you agree with the  
11 finding?

12 MR. PIXLEY: I agree with what was there.  
13 At the time we were talking about a base approach,  
14 and so no other comments other than UMC will handle  
15 this task.

16 SPECIAL MASTER GARRIE: Have you  
17 received -- was someone going to say something or did  
18 I -- sorry.

19 MS. FOLEY: No, please go ahead.

20 SPECIAL MASTER GARRIE: Those were my only  
21 comments with regards to plaintiffs' summary of the  
22 April 7th hearing.

23 With respect to counsel for UMC, the  
24 Blackberry server, that's page 2 of Counsel Witty's  
25 summary.

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1 MS. WITTY: This is Counsel Witty. Page 2  
2 continues with a discussion of the Blackberry  
3 exchange server, and the information that was  
4 requested to be identified, including the components  
5 that are up and running from 2011 to current.

6 The server configuration with regard to  
7 pushing or pulling of updates, the syncing of  
8 folders, and what information is contained on the  
9 Blackberry server.

10 SPECIAL MASTER GARRIE: And I don't  
11 understand your comment, pulling not providing  
12 specific data. I'm going to just go with what I'm  
13 looking for at a very basic level.

14 MS. WITTY: Okay.

15 SPECIAL MASTER GARRIE: I want someone from  
16 UMC that knows what the data retention policies and  
17 implementation are for the Blackberry environment  
18 that can answer this.

19 So how long does the Blackberry server  
20 actually support e-mails? What is the policy? How  
21 is the serving configured for messaging and e-mails?

22 MS. WITTY: And would you like this person  
23 to be available for questioning from you, or would  
24 you like those -- would you similarly like that in an  
25 affidavit?

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1 SPECIAL MASTER GARRIE: I'll take it in an  
2 affidavit considering -- unless UMC can identify this  
3 individual and make sure that they know, because this  
4 would be the second time we've tried this.

5 MS. WITTY: Understood.

6 SPECIAL MASTER GARRIE: So but I would like  
7 whoever signs the affidavit to be available by phone  
8 for the day we have the hearing on the 22nd.

9 Counsel for UMC did a phone call, and the  
10 transcript where we discussed the Blackberry server,  
11 and we established we don't know who at UMC actually  
12 wrote the policies.

13 MS. WITTY: Yes.

14 SPECIAL MASTER GARRIE: I also request that  
15 counsel for UMC draft a subpoena for Sprint since the  
16 wiping was -- I'm not even exactly sure. When I read  
17 the transcript, I couldn't actually figure out when  
18 they stopped wiping phones for the custodian, all 27  
19 of them.

20 With that in mind, I request that counsel  
21 for UMC send or subpoena the -- draft a subpoena for  
22 me to issue in my capacity as Special Master to  
23 Sprint requesting all text messages and other  
24 information they have for the custodian devices that  
25 were UMC devices.

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1 MS. WITTY: Understood.

2 SPECIAL MASTER GARRIE: I also direct for  
3 the record -- I was off the record when I instructed  
4 UMC to review their policies in regards to HIPAA and  
5 their alignment as being beyond the scope of this  
6 hearing.

7 Off the record.

8 (A discussion was held off the record.)

9 SPECIAL MASTER GARRIE: We agree that tapes  
10 will replace discs -- discs will replace the word  
11 tapes, sorry.

12 One thing that I did want to get clarified  
13 from Mr. Clark was the Unix server, and what is  
14 actually stored on it in an affidavit where he says  
15 the Unix server keeps records for seven years. It  
16 stores information from the following systems. These  
17 systems include X, Y and Z.

18 Again, if UMC a data map or some diagram  
19 that could detail this out this wouldn't be  
20 necessary, but because it's not available, I have no  
21 other solution, but request that or the alternative  
22 is go on site and verify it myself.

23 Counsel for UMC, is there anything else you  
24 would like to point out in your notes summary, or  
25 seek clarification on?

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1 MS. FOLEY: We're looking.

2 MS. WITTY: This is Counsel Witty. I will  
3 defer to Joe. I think there was one additional  
4 question that he may have had with regard to  
5 clarification.

6 MR. EDMONDSON: This is Joe. I did want to  
7 ask as far as production for the password-protected  
8 files. Some of the files -- actually the Word  
9 Perfect 5.1 password-protected files, Passware is  
10 unable to make an unprotected version of them, and is  
11 unable to open them.

12 Did we want to provide a password list  
13 since they're all going to be native files? Or do we  
14 want to provide the unprotected version on files that  
15 that's possible to do?

16 SPECIAL MASTER GARRIE: Has counsel for UMC  
17 seen these files? All of them?

18 MS. WITTY: This is Counsel Witty. I have  
19 not reviewed the specific files completely.

20 SPECIAL MASTER GARRIE: Why don't counsel  
21 for UMC, you review all of the files. If any of them  
22 are responsive or relevant, we'll then cross that  
23 bridge. Unless counsel for plaintiff have any  
24 objection?

25 MR. GODINO: This is Marc. No.

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1 SPECIAL MASTER GARRIE: Counsel for UMC,  
2 acceptable?

3 MS. WITTY: Yes.

4 SPECIAL MASTER GARRIE: With regard to -- I  
5 would like to point the parties' attention to the  
6 summary provided by plaintiff of the April 4th  
7 special master hearing.

8 MS. FOLEY: We just have the 7th, I  
9 believe.

10 MR. TOSTRUD: I circulated the 4th last  
11 night.

12 MS. FOLEY: Okay. Thank you.

13 MR. TOSTRUD: So you should have it.

14 MS. FOLEY: Okay.

15 SPECIAL MASTER GARRIE: I just want to make  
16 sure that counsel for UMC has been able to obtain  
17 Doug Spring and James Mumford's laptops.

18 MS. WITTY: Yes. Doug Spring's work laptop  
19 is still in UMC custody. We are going to make it  
20 available to Mr. Edmondson for imaging.

21 Due to the personal nature of Mr. Mumford's  
22 laptop, our client has requested that we wait to  
23 image it until an order from the Court is issued. He  
24 has been instructed completely with regard to  
25 preservation and not to remove or delete or alter any

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1 information. But we are asking that we receive the  
2 order to direct that imaging.

3 SPECIAL MASTER GARRIE: Let the record  
4 reflect right now that I do and will be ordering this  
5 in writing and am further ordering Mr. Mumford's  
6 laptop to be handed over, because of the fact that  
7 Mr. Mumford's statement in his chain of custody  
8 declaration, and the fact that he states that he was  
9 off site meeting and negotiating something to do with  
10 SEIU, and the time had no Smartphone, so the only way  
11 he could have been communicating at the time via  
12 e-mail or with anybody was via that laptop.

13 Therefore, I am ordering the preservation  
14 of his laptop, and I will issue that said order  
15 forthwith.

16 MS. WITTY: Thank you. This is Counsel  
17 Witty, with regard to the summarized notes for  
18 counsel, plaintiffs' counsel, for the 4th --

19 SPECIAL MASTER GARRIE: They weren't  
20 summarized notes. They were just bullet points of  
21 all the data during the hearing.

22 MS. WITTY: I don't believe that --

23 SPECIAL MASTER GARRIE: Can you please  
24 resend it?

25 MR. GODINO: Sure. Happy to do so.

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1 MS. WITTY: I don't know if it's necessary  
2 to review it. I just wanted you to know that we did  
3 not receive it.

4 SPECIAL MASTER GARRIE: You're on the  
5 e-mail chain, so...

6 MR. GODINO: And that may be your law  
7 firm's security.

8 MS. WITTY: That's what I'm worrying about.

9 SPECIAL MASTER GARRIE: Off the record.

10 (A discussion was held off the record.)

11 MR. GODINO: This is Marc Godino. I just  
12 want to note to defense counsel that I just resent  
13 our notes of the April 4th hearing, so you should get  
14 it momentarily, if not already.

15 MS. WITTY: Thank you.

16 SPECIAL MASTER GARRIE: All right. We're  
17 back on the record, correct?

18 All right. So now I would like to look at  
19 Mr. Jon Tostrud's notes dated April 9th, 2014.

20 Counsel for UMC has them open?

21 MS. WITTY: Yes. Those we have.

22 SPECIAL MASTER GARRIE: So I'll let counsel  
23 for plaintiffs -- off the record.

24 (A discussion was held off the record.)

25 SPECIAL MASTER GARRIE: Turning over to



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1 plaintiffs, I would like them to walk through their  
2 questions and concerns about the custodian interviews  
3 so we can address and ensure that we have properly  
4 accounted for and acknowledged all the potential  
5 sources of the material.

6 Counsel for plaintiffs, please take the  
7 lead, starting with ESI data storage that was  
8 identified.

9 MR. TOSTRUD: Just a second, we're getting  
10 to that document.

11 SPECIAL MASTER GARRIE: I will point out  
12 that counsel for UMC, you should read this fairly  
13 closely because they do identify several different  
14 file servers in other locations that you will  
15 certainly want to make sure are being collected from.

16 MS. FOLEY: Thank you. We understand.

17 MR. FORREST: Jon, this is Doug. Do you  
18 want me to walk through this?

19 MR. TOSTRUD: Yes. I think it would be  
20 helpful if you could run through those questions, and  
21 then Marc and I may do some cleanup.

22 MR. FORREST: Okay. This is the section,  
23 this is beginning on the bottom of page 1, just  
24 identifying some abbreviations. And then we go to a  
25 section on the following page, page 2, ESI Data

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1 Sources Identified.

2 And basically this we went through the  
3 custodian interviews provided to us and tried to  
4 identify the ESI data sources.

5 There is a subsequent separate section  
6 dealing with additional document types, as opposed to  
7 locations.

8 And a lot of these, you know, we put down  
9 the information that we were able to glean, but we  
10 don't -- a lot of it is fairly ambiguous using terms  
11 like network server, home server, home folder, shared  
12 drive, Q-drive.

13 SPECIAL MASTER GARRIE: Can I make a  
14 suggestion? What I'm hoping you can do -- I  
15 recognize that. And so when you say network server,  
16 can you please -- like if you want things clarified,  
17 state for the record you would like to know further  
18 clarification A, B and C because you believe this is  
19 old X, Y and Z.

20 MR. FORREST: Okay. Well, then I'll just  
21 run through them one at a time.

22 Jackie Panzeri stated the notes regarding  
23 her entry states that she saved everything to the  
24 network server, possibly the home folder.

25 We don't have the data map. I would like

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1 that network server and the possible home folder  
2 identified.

3 Next she also talked about full timekeeping  
4 and payroll database is on network server. She  
5 appears to be referring to a database, singular. And  
6 I would like identification of that. And I would  
7 like identification of mapping of the network server  
8 that's being referenced.

9 SPECIAL MASTER GARRIE: One at a time. One  
10 at a time, because I have points on each of them.

11 So rewinding one, with the network server,  
12 I believe we're going to get a list. Dean, I  
13 believe, from UMC is going to provide us a list with  
14 every file server that a user had access to.

15 Because I agree that network server that  
16 she's referencing counsel for UMC, you need to make  
17 sure, you need to verify (a) what it is, and provide  
18 further clarification, and to make sure that is isn't  
19 improperly collected. Because I don't know if it's  
20 her home directory or based on the script, it's not  
21 clear.

22 Is that clear UMC?

23 MS. WITTY: Yes.

24 SPECIAL MASTER GARRIE: Okay. Moving to  
25 point number two. I actually -- I had a similar

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1 question. Can you clarify or respond to, was that --  
2 who was that talking about?

3 MR. FORREST: Who? JP or Doug?

4 SPECIAL MASTER GARRIE: Doug, thank you.

5 So if Doug's comment about the payroll  
6 database is on a network server, again, I find -- I  
7 know they're not technical people. I just want to  
8 make sure, given that there's no data map, no  
9 nothing, that you guys are getting the right payroll  
10 database server, and that she's, indeed, referencing  
11 Kronos. I mean, I just don't know.

12 So I think that we need clarification there  
13 from maybe the IT people or from JP herself.

14 MS. WITTY: This is Counsel Witty. Are you  
15 wanting us to clarify where the Kronos database is in  
16 the server infrastructure?

17 SPECIAL MASTER GARRIE: We want to make  
18 sure that what when she said full timekeeping and  
19 payroll database is on the network server, that she  
20 is, indeed -- what systems is she referring to?

21 MS. WITTY: She was referring to Kronos.

22 MR. FORREST: Is it Kronos? Is it SAP? Is  
23 it some kind of --

24 SPECIAL MASTER GARRIE: So counsel for UMC,  
25 you were just going to answer that. What were you

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1 going to say?

2 MS. WITTY: I spoke with Ms. Panzeri today.  
3 The timekeeping and payroll database that she's  
4 referencing is Kronos.

5 With regard to its location, she was saying  
6 that it's not on her computer, that it's on a server  
7 that she accesses. And I guess I'm just not sure  
8 what you want us to document in terms of its  
9 location?

10 SPECIAL MASTER GARRIE: I mean, based on  
11 the information that will be provided by Dean, I  
12 don't think we, with the file maps, the network pass  
13 and the names, I don't think we require that, it will  
14 require more.

15 So Mr. Forrest, am I missing anything?

16 MR. FORREST: I would expect that a lot of  
17 these, if we actually finally get the data map,  
18 enhanced data map, that a lot of those questions will  
19 be answered.

20 You know, we just have to tie up the  
21 pointers and say that's, in fact, a reference to the  
22 here on the map, so to speak.

23 SPECIAL MASTER GARRIE: Okay. So let's  
24 move forward and make sure to revisit it if we don't  
25 receive sufficient detail.

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1 MR. FORREST: And let me just raise an  
2 additional point, too, if I might. It just occurs to  
3 me as we're talking now.

4 I'm wondering if there's any sort of, you  
5 know, instruction guide that's given to the employees  
6 here, you know, in terms of the use of the computer  
7 system, and maybe there will be some definitions of  
8 some of the terms we're coming across. I'm just  
9 thinking out loud.

10 Okay, next, Jackie backed up everything in  
11 archiving. And I'm not sure whether this is a  
12 reference to archives that she's making in Outlook,  
13 or whether those are common archives somewhere. And  
14 I would like identification of those.

15 MS. WITTY: Understood.

16 MR. FORREST: And the second one, same  
17 question, specifically with reference to the separate  
18 archive to the small lawsuit and the DOL  
19 investigations.

20 DOL investigations, I tried to -- I did not  
21 find that the screenshots were that much easier to  
22 read in the electronic version.

23 MS. WITTY: I can say, this is Counsel  
24 Witty, with regard to the archive for the small  
25 lawsuit and the DOL investigation, Ms. Panzeri does

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1 have e-mail archives specific to those topics.

2 MR. FORREST: A personal archive you're  
3 saying?

4 MS. WITTY: Yes.

5 MR. FORREST: Within her e-mail?

6 MS. WITTY: Yes.

7 MR. FORREST: So is she referring to e-mail  
8 archive or other document archive?

9 MS. WITTY: With regard to the stuff above,  
10 I believe she was specifically discussing Outlook and  
11 her e-mail archives. She very extensively archives  
12 her e-mails. I've actually looked at it today.

13 But I want to make sure that she doesn't  
14 have any other archiving before I confirm.

15 SPECIAL MASTER GARRIE: Okay. The next  
16 one.

17 MR. FORREST: The next one is a typo there.  
18 Jackie instant messaging with Claudette Myers.  
19 "Non-mall" is non-small.

20 She doesn't store the messages. Obviously,  
21 we have a question about doesn't store messages.  
22 Obviously, there's no way to tell at this point.  
23 That would be argumentative.

24 I guess essentially, is that, in fact, the  
25 case, and are those messages stored anywhere else?

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1 Perhaps CM retains them?

2 MS. WITTY: We will clarify.

3 MR. FORREST: Okay. Next is Mr. Mumford's  
4 personal laptop. It's been referenced earlier in  
5 this hearing. Used for business with wireless access  
6 and TS Web.

7 It's the Special Master's order to  
8 preserve. I don't have any further comment with  
9 respect to that.

10 Next is Mr. Mumford's statement, or the  
11 notes of his statement, that he mainly saves to  
12 shared drive, unsure if department or home folder.

13 And again, we would like this clarified.

14 MS. WITTY: This is Counsel Witty. I spoke  
15 with Mr. Mumford today as well, and clarified that he  
16 was referencing his home folder.

17 MR. FORREST: Okay. Next is some JM  
18 negotiation notes saved on desktop or My Documents  
19 folder on C drive.

20 As I read the robocopy script, I think they  
21 were -- and correct me if I'm wrong, Bruce -- but  
22 essentially they are collecting everything under the  
23 document and settings directory for the particular  
24 user. So that the desktop would have been preserved  
25 as well; is that correct?



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1 MR. PIXLEY: As far as your question, the  
2 robocopy script grabs the entire user profile, so  
3 starting at the root of the user profile, and working  
4 down. So it would include those items.

5 MR. FORREST: Okay. Next is the voicemail  
6 system Call Pilot version, whatever the version  
7 number is.

8 I would like to know whether -- how long  
9 the messages are saved? Is there any backup? Is it  
10 searchable? Basically the full rundown.

11 SPECIAL MASTER GARRIE: Counsel for UMC, do  
12 you have anything to add?

13 MS. WITTY: I apologize. This is counsel.  
14 That is understood.

15 MR. FORREST: Okay. And then we have  
16 Mr. Mumford's text messages, which are characterized  
17 as being mostly personal.

18 I understood that to be text messages on  
19 his Blackberry device. And I guess this is just  
20 subsumed in the larger question of Blackberry backup  
21 and so forth.

22 We then have -- I'm about to mangle  
23 somebody's name here -- Mr. Brannman's materials, his  
24 desktop, and his never-used laptop. And I'm not sure  
25 whether those were imaged or not. They should have

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1     been, I believe.

2                 SPECIAL MASTER GARRIE: Before we get to  
3     what we believe, why don't you just ask a question.

4                 MR. FORREST: Yes. Well, I want to know  
5     whether his desktop and laptops were preserved.

6                 SPECIAL MASTER GARRIE: Counsel for UMC?

7                 MS. WITTY: This is Counsel Witty. The  
8     laptop and being located. It is still in the  
9     possession, and will be imaged.

10                The desktop would have been part of the  
11     collection, and everything would have been collected  
12     underneath his profile. The desktop is still in the  
13     possession of UMC, and as part of the order from  
14     Monday, we understand that it will be imaged.

15                MR. FORREST: Okay. Let me take the next  
16     two other as comments on the population of BB  
17     documents.

18                And we understand from here that he saved  
19     most documents to the desktop My Documents folder.  
20     No questions about that. That would have been  
21     preserved.

22                And then he placed a large document on  
23     share drive. We would like the identification of  
24     what that share drive is.

25                And we would like to know whether most

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1 documents and large documents constitutes the  
2 entirety of the BB document collection, or whether  
3 there's some portion of it which does not fall into  
4 either category. And if so, where it is to be found.

5 MS. WITTY: Understood.

6 SPECIAL MASTER GARRIE: Understood what?

7 MR. EDMONDSON: Okay.

8 SPECIAL MASTER GARRIE: One second.

9 Understood what?

10 MS. WITTY: This is Counsel Witty. I  
11 understand that what he's asking is whether there are  
12 other documents outside of most on his My Documents  
13 folder and large documents on the shared drive. That  
14 if there are other documents, that fall outside of  
15 those descriptions, that we would be identified as to  
16 location.

17 And similarly, UMC will be identifying the  
18 share drive folder that would hold the large  
19 documents referenced.

20 MR. FORREST: Okay. We're now moving on to  
21 Mr. Espinoza. It's a description of documents  
22 emailed mailed to Claudette Myers saved by her in  
23 shared folder. We would like identification of the  
24 shared folder.

25 It goes on to indicate that Claudette Myers

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1 determined what needs to go in the HR department  
2 drive. We would like identification of that drive.  
3 I don't know whether it's -- if that's the same as a  
4 folder that's been defined elsewhere, whether it is  
5 some other storage device modality that's somewhere  
6 else on the network. So we would like that  
7 identified.

8 SPECIAL MASTER GARRIE: Okay. Is that --  
9 counsel for UMC, is that a problem?

10 MS. WITTY: No.

11 MR. FORREST: Then we have Mr. Espinoza  
12 saves mainly to the personal drive on network home  
13 folder. Likely some information on his C-drive.

14 Again, we would like identification of the  
15 personal drive on the network and the home folder.  
16 And if there could be any information on the C-drive  
17 stored outside of his user profile.

18 SPECIAL MASTER GARRIE: At the time --  
19 let's be clear. Not today, but at the time in  
20 question, because UMC's systems have changed since  
21 then.

22 MR. FORREST: Understood. That's  
23 acceptable.

24 MS. WITTY: This is UMC counsel. That's  
25 understood.

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1 MR. FORREST: Okay. Next we have Claudette  
2 Myers who also scans in hard copies for archiving as  
3 needed.

4 We would like to know how -- how the  
5 determination of being needed is made, and where  
6 those hard copies, those scanned hard copies are now  
7 resident or were resident at the time.

8 SPECIAL MASTER GARRIE: One second. This  
9 is Special Master Garrie here.

10 You said you want to know how she  
11 determines what is needed for scanning?

12 MR. FORREST: I think that may be outside  
13 the scope here.

14 SPECIAL MASTER GARRIE: I'm just checking  
15 what your request was.

16 MR. FORREST: Yes. Yes. I mean, that  
17 indicates that there is a binary classification as to  
18 those which need to be archived and those which don't  
19 need to be archived.

20 SPECIAL MASTER GARRIE: I got it. Thank  
21 you for clarifying. I just wanted to make sure  
22 UMC -- counsel for UMC understood it as well.

23 Counsel for UMC, do you have anything you  
24 would like to state here?

25 MS. WITTY: I spoke with Ms. Myers today.

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1 With regard to the scanning capabilities as discussed  
2 at the hearing on Monday, it only creates PDFs. They  
3 are automatically saved to a directory file in the --  
4 excuse me, into a file on the Q-drive, so the shared  
5 network that is identified for Claudette directly and  
6 her scans.

7 So it goes directly from the machine that  
8 is scanning into her file from the scanner on the  
9 Q-drive.

10 It is then determined whether or not that  
11 scan goes into the -- whether it stays there as just  
12 general filing. And I would say Claudette scans the  
13 vast majority of hard copy documents that come from  
14 John Espinoza.

15 The only thing that we have identified that  
16 isn't scanned as needed would be documents that are  
17 temporal in use. They are not something that was  
18 created or will be used in any other term. It's  
19 something that's printed out and shredded that day.

20 They shred everything that is not required  
21 hard copy. They are no longer doing that with regard  
22 to --

23 SPECIAL MASTER GARRIE: As of what date?

24 MS. WITTY: I can't tell you that exactly.

25 I know that Jackie Panzeri has been retaining

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1 documents for the past six months. I would have to  
2 clarify. I don't have my notes right in front of me  
3 with regard to Ms. Myers.

4 MR. TOSTRUD: This is Jon Tostrud, and I  
5 would like to interject and see if we could get a  
6 date certain by when we'll get an answer to that  
7 question?

8 SPECIAL MASTER GARRIE: Well, I can help  
9 speed that up. I would like to order counsel for UMC  
10 to provide a date by the end of tomorrow, assuming  
11 it's in your notes.

12 MS. WITTY: This is Counsel Witty. I guess  
13 I'm confused as to exactly what I am supposed to  
14 clarify.

15 SPECIAL MASTER GARRIE: Counsel for  
16 plaintiffs, you can state your point and then --  
17 counsel for UMC -- let's go off the record. Strike  
18 the last two sentences.

19 (A discussion was held off the record.)

20 SPECIAL MASTER GARRIE: So let's go back  
21 the record.

22 I would like Counsel Witty, can you please  
23 reask your question, and we'll answer that, and then  
24 counsel for plaintiffs, and I'll then make -- I'll  
25 issue my ruling.

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1 Counsel UMC?

2 MS. WITTY: I'm uncertain as to what  
3 exactly needs clarification.

4 MR. TOSTRUD: This is Jon Tostrud for  
5 plaintiffs. It's my understanding that counsel for  
6 UMC indicated that some documents were being shredded  
7 before they were scanned, and we would like to get an  
8 answer to the question of when the shredding of those  
9 documents that were not scanned, when that stopped?  
10 When did the shredding stop?

11 SPECIAL MASTER GARRIE: Does that help you  
12 out, Counsel Witty, and clarify?

13 MS. WITTY: This is Counsel Witty. Yes.  
14 Just to clarify, is the special master ordering that  
15 to be determined by end of day tomorrow?

16 SPECIAL MASTER GARRIE: Well, as I  
17 understood your prior comments, you had it in your  
18 notes. Do you not -- have you not had this  
19 conversation?

20 MS. WITTY: I have. I just want to make  
21 sure that that was your -- I was just clarifying that  
22 was the timeline.

23 SPECIAL MASTER GARRIE: Yes. Assuming that  
24 you have it in your notes, you just have to look at  
25 your notes, yes. By end of day tomorrow, 5:00 p.m.



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1 MS. WITTY: Thank you.

2 MR. FORREST: This is Doug, should I  
3 continue?

4 SPECIAL MASTER GARRIE: Yes, please.

5 MR. FORREST: Okay. Now, we were on to  
6 Doug Spring. He's got two desktops, one in two  
7 offices, a laptop and then the mobile work stations.

8 We are requesting that the two desktops and  
9 laptops be imaged. And with respect to the mobile  
10 work stations, the Special Master has already ruled  
11 in terms of identification of mobile work stations  
12 which were used by Mr. Spring, or anyone else for  
13 that matter, more than five times within a month.  
14 And I think that, as eventually interpreted and  
15 developed in conjunction the data that we get back,  
16 is sufficient.

17 Now, prior to 2009, everything sent to  
18 Doug Spring via e-mail and saved to shared HR drive,  
19 we want identification of the HR drive.

20 SPECIAL MASTER GARRIE: One second. Hold  
21 on one second. Sorry for interrupting one second.

22 Counsel for UMC, the HR drive is an example  
23 of the network file share that should certainly be  
24 collected just for the purposes of demonstrating what  
25 I have in mind, as to reading the custodian

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1 interviews to make sure that everything is collected  
2 from the network file share.

3 MS. WITTY: This is counsel. We  
4 understand.

5 MR. FORREST: This is Doug again. The next  
6 portion I found somewhat contradictory. We had  
7 Mr. Spring being noted as he knows to only save to  
8 the home folder network saved, but on the other hand  
9 he always saves on the HR shared drive.

10 So I guess there's some confusion here. So  
11 what I'm asking for is both identification of those  
12 locations, and clarification as to the apparent  
13 contradiction.

14 MS. WITTY: This is Counsel Witty. This  
15 was actually one of the questions that I discussed  
16 with Doug Spring today. Because I saw that, because  
17 it was pointed out to me in these notes, the  
18 contradiction.

19 He always saves to his home folder. That  
20 home folder is the one that is backed up as part of  
21 the network.

22 But we understand that you're asking for  
23 that to be identified, and similarly his access to  
24 the -- to any HR shared files, as well, is to be  
25 identified.

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1 MR. FORREST: This is Doug again. Moving  
2 on to Doug Spring's personal drop box, mainly for  
3 grandkid photos. Which indicates that -- mainly  
4 implies that there are times when there are things  
5 other than grandkid photos, and the question that I  
6 would have is, is there any UMC work-related material  
7 that Mr. Spring keeps in his personal drop box.

8 MS. WITTY: This is Counsel Witty. Again,  
9 this is something that I discussed with Doug Spring  
10 today. He actually does not have drop box on his UMC  
11 desktop. And I did look at this. I did visually  
12 confirm this today. It's something he uses on his  
13 iPhone, his personal iPhone.

14 The other thing that he keeps on his drop  
15 box are recipes from his wife, in case you're  
16 curious.

17 We are still looking at the file name pass  
18 that indicate drop box files to confirm timing and  
19 how that is captured in the collection.

20 MR. FORREST: Okay. And then the final one  
21 in this category, Doug Spring e-mail archives saved  
22 Q-share drive.

23 Again, identification of the Q-share drive,  
24 and identification of those e-mail archives and where  
25 they are stored.

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1 MS. WITTY: Okay.

2 SPECIAL MASTER GARRIE: Okay yes? Or okay?

3 MS. WITTY: Yes, sorry. That will be done.

4 MR. FORREST: This is Doug again. The next  
5 section is just an identification of the mobile  
6 devices for our -- as long as I was going through, I  
7 just wanted to record those. Again, in terms of the  
8 wipe asking so forth, I think that's already covered  
9 by the Special Master's orders and directives.

10 The only issues that I have here which we  
11 have not come upon is on page 3 at the top, DS, Doug  
12 Spring. He indicates on his personal iPhone he's  
13 occasionally texting to individuals in HR and to UMC  
14 directors. And that he's occasionally syncing to his  
15 home computer, and that he's accessing UMC e-mail,  
16 that's my interpretation, through web mail, with an  
17 internet browser within the iPhone.

18 So obviously, in terms of -- not obviously.  
19 In terms of those texts to individuals in HR and UMC  
20 directors, which may or may not be on his iPhone or  
21 synced to home computers, we would submit perhaps  
22 that iPhone 5S needs to be imaged.

23 With respect to accessing UMC e-mail  
24 through web mail with an internet browser, depending  
25 upon whether the Cache setting for the UMC mail

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1 server permits the bodies of e-mails to be saved in  
2 the internet history, and so forth, if it doesn't  
3 allow saving, then we don't have much interest in it.  
4 If it does, then I guess that would be captured and  
5 part of the imaging and why we're requesting them.

6 SPECIAL MASTER GARRIE: Counsel for UMC?

7 MS. WITTY: This is Counsel Witty. I spoke  
8 with Doug Spring about his personal iPhone today. He  
9 has only had the iPhone 5S since January of 2014.

10 The only individual that he had texts in  
11 connection with was John Espinoza. He is personal  
12 friends with John Espinoza and John Espinoza's wife.

13 And so there is -- and I verified this  
14 visually. He does text with regard to going to lunch  
15 as in, hey, are you at lunch or, hey, would you like  
16 to get lunch. But there is a significant hesitance  
17 to the imaging of his personal phone.

18 SPECIAL MASTER GARRIE: Well, what phone  
19 did he have before the 5S?

20 MS. WITTY: It was a previous version of  
21 the iPhone. The reason why he upgraded was because  
22 it was completely destroyed. He was not able to  
23 transfer over any information. There was no  
24 migration of data. And that is why -- I mean, the  
25 only thing that's going to be on that phone is

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1 information from January 2014 to current. It's an  
2 extremely limited reference.

3 MR. TOSTRUD: This is Jon Tostrud for  
4 plaintiffs. I just wanted to confirm that we're on  
5 the record.

6 THE COURT REPORTER: Yes, we are and I have  
7 been.

8 MR. TOSTRUD: Plaintiffs, first of all,  
9 would ask whether the previous phone or any other  
10 phones that Mr. Spring has used, iPhone or otherwise,  
11 are available?

12 MS. WITTY: This is counsel for UMC. Are  
13 you asking if any of his previous personal phones are  
14 available?

15 MR. TOSTRUD: Yes. The ones that you just  
16 indicated he texted with Mr. Espinoza on.

17 MS. WITTY: This is Counsel Witty. I'm  
18 not sure that I indicated that he texted with  
19 Mr. Espinoza on any prior phones. I'm not sure what  
20 you're asking for.

21 MR. TOSTRUD: I'm asking if the previous  
22 versions of the iPhone are available. Where are  
23 they?

24 SPECIAL MASTER GARRIE: One second. This  
25 is Special Master Garrie. I'm going to try this

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1 differently, and then we can -- I'll let plaintiff,  
2 if I believe necessary, make further inquiries.

3 He's asking does he have any old iPhones?

4 MS. WITTY: This is Counsel Witty. No.

5 SPECIAL MASTER GARRIE: Did he use the  
6 iPhones to -- he uses the current iPhone 5S. Did he  
7 use his prior iPhone -- sorry, someone want to say  
8 something?

9 Did he use his prior iPhones to perform or  
10 communicate with UMC individuals, either in HR or  
11 directors?

12 MS. WITTY: The only -- this is Counsel  
13 Witty. I apologize.

14 The only individual that he mentioned  
15 within UMC with regard to texts was Mr. Espinoza.

16 He mentioned -- so I want to clarify, this  
17 is Counsel Witty again. With regard to the UMC  
18 directors, his personal cell phone is available to  
19 UMC director level employees.

20 So the director of nursing or the director  
21 of a particular service area would have access to  
22 that number. He would not necessarily be engaging in  
23 any text communications with them.

24 He did not have any communications with any  
25 other UMC individuals on his phone.

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1 SPECIAL MASTER GARRIE: Counsel for  
2 plaintiffs, do you have any questions?

3 MR. TOSTRUD: No, I don't have any  
4 additional questions. I think Ms. Witty has laid the  
5 foundation herself with her own description for the  
6 relevance and the importance of these phones, both  
7 the phones that no longer exists and the current  
8 phone. And plaintiffs would request that that phone  
9 be imaged.

10 Plaintiffs would further emphasize the  
11 importance of the developments in this case since  
12 January of 2014. There have been an extraordinary  
13 number of important developments. So that that phone  
14 and what's on it, beginning in January 2014, if he's  
15 communicating with the chief of human resources,  
16 John Espinoza, contains critical relevant evidence,  
17 and that's the plaintiff's position.

18 And plaintiffs would just further add that  
19 the past destruction of other Doug Spring phones that  
20 the current phone, it's even more important now than  
21 ever to mirror image it.

22 MS. WITTY: This is counsel for UMC. I  
23 think that the previous discussion that was made by  
24 Special Master Garrie with regard to creating a  
25 record of legal conclusions or personal advocacy



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1 would be inappropriate at this time. I don't believe  
2 that there has been established a place for that  
3 argument.

4 SPECIAL MASTER GARRIE: For the parties,  
5 I'm still on the call.

6 I'm going to note plaintiffs' point for the  
7 record, and I'm going to point out that counsel for  
8 UMC is correct in her statements.

9 I do have -- I do want to discuss this. I  
10 would like to discuss it on the 15th. And I would  
11 like to generally and broadly discuss the phones.

12 But I would like to it post seeing the  
13 iPhone, iPad, and other mobile results. It isn't  
14 something from plaintiffs' side that I am not  
15 cognizant or aware of, but I would certainly prefer  
16 to see the results of the mobile searches prior to  
17 going anywhere.

18 But I do want to repeat my request that we  
19 keep legal argument to a minimum here, and we keep  
20 focusing on just getting through the custodian's  
21 interviews.

22 And I would note for the record that at the  
23 hearing on the 15th, I did plan to have further  
24 discussions and an opportunity to evaluate the  
25 findings from the searches. Is that clear to

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1 plaintiffs?

2 MR. TOSTRUD: Yes.

3 SPECIAL MASTER GARRIE: And to UMC as well?

4 MS. WITTY: Yes.

5 SPECIAL MASTER GARRIE: And to be fair to  
6 both sides, at that time I will certainly welcome  
7 discussion into how long those limited -- advocacy  
8 around the imaging or collection of personal mobile  
9 devices.

10 Take charge. Keep moving.

11 MR. FORREST: This is Doug again. And next  
12 we have some bullet points about Mr. Espinoza's  
13 mobile devices.

14 I will note -- first back to Doug Spring.  
15 Text individuals in HR and UMC directors, that we got  
16 from the custodian information forms. So if that is  
17 no longer correct, we request that it be corrected.

18 Under Mr. Espinoza, he says he will text in  
19 response to work requests. That doesn't seem to line  
20 up on all fours with representation of the statement  
21 of Mr. Spring.

22 SPECIAL MASTER GARRIE: Let's stick with  
23 what you want clarified.

24 And I'm going to help you out here  
25 Mr. Forrest. What you would like clarified -- do you

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1 understand the direction I would like? So if you  
2 want clarification, that's fine. I don't need to  
3 understand -- I want to understand what you want  
4 clarified. And if I need to understand the reason  
5 why, I will ask.

6 MR. FORREST: Okay. We would like a full  
7 description of Mr. Espinoza's texting.

8 MS. WITTY: This is counsel for UMC.

9 SPECIAL MASTER GARRIE: You were about to  
10 say something.

11 MS. WITTY: I would request a more specific  
12 clarification. A full description of texting is  
13 rather vague.

14 MS. FOLEY: Not to mention broad.

15 SPECIAL MASTER GARRIE: So I'll help narrow  
16 it down. This is Special Master Garrie, and then  
17 plaintiffs, if this is not sufficient, please object,  
18 and I'll note it for the record.

19 I would like to know who he was texting,  
20 when he was texting, and with relations to people at  
21 UMC, about UMC. And I would like to know, you know,  
22 what he was doing.

23 I mean, the text messages that we received  
24 obviously -- one second here, ones that were as of  
25 January 2014 -- am I correct, that's all we were able

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1 to acquire, Mr. Edmondson?

2 MR. EDMONDSON: This is Joe Edmondson.

3 That is correct.

4 SPECIAL MASTER GARRIE: Thank you.

5 So what I want to understand is who he was  
6 texting, since when was he texting. And since we  
7 don't have any information here that we can actually  
8 look at, I would like counsel for UMC to go to him  
9 and his best recollection to figure out who he was  
10 texting before January 1, 2014, and what he was  
11 texting them about, so we have at least some context  
12 to see if it's necessary to collect or inspect his  
13 personal devices, or broaden the subpoena to Sprint  
14 or otherwise.

15 Because as far as I'm concerned, he said  
16 that he had this device as of January 20th, 2011, but  
17 we have no text messages before in 2011, 2012, or  
18 2013, only from 2014. And that's a point of concern  
19 for me at this point. Is that clear?

20 MS. WITTY: Yes.

21 SPECIAL MASTER GARRIE: And I would also  
22 like an affidavit from Mr. Espinoza, or he can  
23 discuss it with me on the 22nd, explaining how if  
24 he's had the same phone since January 20th, 2011,  
25 there's only text messages as of January 2014.

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1 MS. WITTY: This is Counsel Witty. Due to  
2 the technical nature of how UMC maintains its  
3 UMC-issued phones, if Mr. Espinoza is not technically  
4 able to explain that, are you requesting that someone  
5 else be available for that?

6 SPECIAL MASTER GARRIE: Well, if he was  
7 using the phone -- I don't know how else to explain  
8 if Mr. Espinoza was sending text messages prior to  
9 January 2014 that are no longer on his phone. I  
10 guess maybe -- yes, yes, I would like that person to  
11 be available by phone. But he should be prepared to  
12 discuss that.

13 MS. WITTY: Understood.

14 MR. TOSTRUD: This is Jon Tostrud for  
15 plaintiffs. Just for further edification and  
16 clarification on this issue, absent Mr. Espinoza's  
17 ability to speak to the technical issues, which we  
18 understand -- plaintiffs understand he was deposed,  
19 and I think could at least speak to the issue of the  
20 April 2013 to January 2014 time period, after which  
21 he was deposed, and was specifically asked about his  
22 communication devices, and was provided with a copy  
23 of the preservation letter.

24 SPECIAL MASTER GARRIE: When was he  
25 deposed?

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1 MR. TOSTRUD: Mr. Espinoza was deposed in  
2 April 2013.

3 SPECIAL MASTER GARRIE: Is that correct,  
4 counsel for UMC?

5 MS. WITTY: This is Counsel Witty. Yes,  
6 Mr. Espinoza was deposed in April of 2013 under prior  
7 counsel.

8 SPECIAL MASTER GARRIE: I got it. And were  
9 you aware that he received a copy of the  
10 preservation?

11 MS. WITTY: I believe it was actually done  
12 within the deposition.

13 SPECIAL MASTER GARRIE: Can someone please  
14 provide that exact transcript language for myself?

15 MR. TOSTRUD: This is plaintiffs' counsel.  
16 Happy to do that.

17 SPECIAL MASTER GARRIE: Okay. That will be  
18 a question and topic of discussion.

19 I'm a little perplexed at -- Mr. Edmondson,  
20 you're certain you created a full image of the  
21 iPhone, correct?

22 MR. EDMONDSON: That was the phone service,  
23 Joe Edmondson. That was the phone that was handed to  
24 me at the time, yes.

25 SPECIAL MASTER GARRIE: The Blackberry

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1 Curve 8530?

2 MR. EDMONDSON: I will review my notes. I  
3 don't believe there was an 8530.

4 SPECIAL MASTER GARRIE: I don't believe so  
5 either. I'm a little confused.

6 MR. EDMONDSON: Let me double check my  
7 chain of custody.

8 SPECIAL MASTER GARRIE: Counsel for UMC,  
9 can you double check to make sure we have all the  
10 right phones?

11 MS. WITTY: Yes. In light of that,  
12 definitely.

13 SPECIAL MASTER GARRIE: Because the way I  
14 read it, the chain of custody -- and I would like  
15 him, Mr. Espinoza, to admit his -- make him aware  
16 that his iPhone, iPad, that I'm refraining from  
17 ordering the production in a court order at this  
18 point until I get the results this Friday. And I'll  
19 expect he is not deleting anything from his personal  
20 iPhone or iPad especially given that he was served  
21 and received the preservation order, and yet there's  
22 no text messages post January 1, 2014.

23 MS. WITTY: You mean -- this is Counsel  
24 Witty. I want to clarify. You want to make sure  
25 that there's nothing deleted from his iPhone or iPad

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1 in light of his UMC phone not having any text  
2 messages prior to January of 2014?

3 SPECIAL MASTER GARRIE: And the fact that  
4 he was deposed in April of 2013 and given a copy of  
5 the preservation notice at that time.

6 MS. WITTY: Thank you for clarifying.

7 SPECIAL MASTER GARRIE: And after my review  
8 on the 15th and the hearing on the 15th, I'll make a  
9 formal ruling at that time.

10 MS. WITTY: We understand.

11 SPECIAL MASTER GARRIE: And I also --  
12 sorry, keep going, Doug.

13 MR. FORREST: Okay. In the section he also  
14 refers to the IM instant messaging system is very  
15 new. The new CEO likes it.

16 In light of Mr. Tostrud's comments about  
17 the relevance of post January 14th materials, we  
18 would like to know the specifications of the instant  
19 messaging system: What is it? Where is it  
20 installed? What are its capabilities? Who uses it?  
21 How are the instant messages saved or recorded? If  
22 they're not being saved and recorded, is that a  
23 capability of the system? Is it backed up?

24 SPECIAL MASTER GARRIE: And that would  
25 require how Blackberry messaging works, or if that's



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1 what he's referring to?

2 MS. WITTY: This is counsel Witty. He is  
3 not referring to his Blackberry with regards to the  
4 instant messaging. The instant messaging is purely  
5 through Outlook. I don't believe it's available on  
6 their Blackberry devices.

7 SPECIAL MASTER GARRIE: You don't believe  
8 or you're certain it's not?

9 MS. WITTY: I will clarify, but none of  
10 them have indicated they can instant message through  
11 their Blackberry.

12 SPECIAL MASTER GARRIE: This can all use  
13 BBM through their Blackberry, as I understand it,  
14 based on what was provided in the hearing. Maybe  
15 once we get further clarification...

16 MS. WITTY: Certainly.

17 SPECIAL MASTER GARRIE: Doug, keep going.

18 MR. FORREST: Okay. There are other  
19 references to the instant messaging, which I guess is  
20 something new, at least in terms of usage.

21 The next section is specific documents  
22 which are identified.

23 MR. GODINO: This is Marc Godino from  
24 plaintiffs' counsel.

25 I want to interject because I had another

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1 question regarding the phones, based on the custodian  
2 interviews. And that had to do with Brian Brannman,  
3 who says that he had an iPhone 3 and 5, and wanted to  
4 know if he ever used that phone to communicate with  
5 UMC personnel.

6 MS. WITTY: This is counsel for UMC. You  
7 want us to clarify whether or not he used his  
8 personal iPhone 3S to communicate with --

9 SPECIAL MASTER GARRIE: I want to broaden  
10 that. I want any personal phone or device he had in  
11 his custody or control at any time for the time  
12 period in question.

13 MS. WITTY: Okay. We understand.

14 SPECIAL MASTER GARRIE: And if he  
15 communicated with anybody from his personal e-mail  
16 account or to their personal e-mail account regarding  
17 or relating to UMC-related work.

18 MS. WITTY: Understood.

19 MR. TOSTRUD: I mean, I guess that question  
20 would go to any of the custodians who had personal  
21 communication devices, whether they used those  
22 devices to communicate to UMC personnel regarding UMC  
23 business.

24 SPECIAL MASTER GARRIE: Can you broaden the  
25 question, counsel for UMC.

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1 MS. WITTY: This is counsel for UMC. Could  
2 you please clarify what you say broaden that question  
3 and to which custodians?

4 SPECIAL MASTER GARRIE: Fair enough. I  
5 apologize for the confusion.

6 What I'm requesting is that counsel for the  
7 six identified custodians specifically inquire as to  
8 whether they used any personal phone or communication  
9 device in their possession, custody or control during  
10 the time period in question to communicate regarding  
11 UMC-related work with any UMC-related employee or  
12 consultant or third parties.

13 MS. FOLEY: During the time period in  
14 question as for Mr. Brannman? This Margaret.

15 SPECIAL MASTER GARRIE: One more time,  
16 sorry?

17 MS. FOLEY: I would just note that for  
18 Mr. Brannman, you instructed this to specify to the  
19 time period in question, and I wanted to know if the  
20 other custodians have the same parameters?

21 SPECIAL MASTER GARRIE: Yes. All  
22 custodians, June 2008 to present.

23 Off the record.

24 (A discussion was held off the record.)

25 SPECIAL MASTER GARRIE: Mr. Forrest?

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1 MR. FORREST: Okay. So the next section is  
2 documents identified from the custodian interviews.

3 And the first one is reports on individuals  
4 for the DOL investigation as referenced in Jackie  
5 Panzeri's custodian interview on page 1.

6 SPECIAL MASTER GARRIE: Okay. Can I make a  
7 suggestion here for -- and I don't want -- I want to  
8 make a general broad statement and reiterate it, so  
9 we don't have to have the same conversation.

10 Any documents that are identified in the  
11 custodian interviews that would have been responsive  
12 to prior document requests, I fully expect counsel  
13 for UMC, as they represented to us on multiple  
14 occasions forthwith, with that they would inquire and  
15 obtain those records, and inspect them and produce  
16 them if they are responsive.

17 Is that clear, counsel for UMC?

18 MS. WITTY: This is counsel for UMC. Yes.

19 SPECIAL MASTER GARRIE: Okay. Mr. Forrest,  
20 is that clear to you, as well?

21 MR. FORREST: It is clear to me. And we  
22 can dispense, I gather, with going through bullet by  
23 bullet here?

24 SPECIAL MASTER GARRIE: We could. There's  
25 one or two that I would like to clarify.

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1 Mr. Brannman and yellow note pad thing. I  
2 don't understand.

3 If someone from UMC could just walk me  
4 through what that means, like she had filed his  
5 yellow stickie notes?

6 BY MS. WITTY:

7 Q. This is Counsel Witty. Are you looking at  
8 the line that starts, "BB took a lot of personal  
9 notes on yellow pads"?

10 SPECIAL MASTER GARRIE: Yeah.

11 MS. WITTY: Okay. That actually is Brian  
12 Brannman. That was his personal notation system. He  
13 would essentially carry around a yellow legal pad.  
14 He would fill it up so that he would have it for  
15 reference at the time. When it was full, he would  
16 discard it.

17 SPECIAL MASTER GARRIE: But it says that he  
18 would provide the yellow file to CD to file.

19 MS. WITTY: Yes. So if there was something  
20 that was taken that was not a temporary note, he  
21 would provide the relevant yellow pad to Cindy Dwyer  
22 to scan and file.

23 SPECIAL MASTER GARRIE: Can you do me a  
24 favor and make sure that you get access to  
25 wherever -- I don't even -- can counsel for UMC

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1 inquire as to where these were stored?

2 MS. WITTY: Yes.

3 SPECIAL MASTER GARRIE: And make sure they  
4 have the opportunity, when they do this collection  
5 from the network file share, that they are indeed  
6 collected? Because I don't think they will actually  
7 be searchable.

8 MS. WITTY: That could be. We will look  
9 into that.

10 SPECIAL MASTER GARRIE: So just please be  
11 mindful of that. Because if it was scribblings, then  
12 obviously his former -- it is former CEO?

13 MS. WITTY: Correct.

14 SPECIAL MASTER GARRIE: I don't believe  
15 that the scanned yellow pad will be OCR, so you need  
16 to make sure that you check the network file share  
17 where she stored it for this file.

18 And that goes --

19 MR. GODINO: This is Marc Godino, and I  
20 just had a further question regarding the yellow  
21 pads: Whether Mr. Brannman at some point, pursuant  
22 to preservation order or litigation hold, stopped  
23 shredding the yellow pads?

24 MS. WITTY: We will clarify.

25 SPECIAL MASTER GARRIE: I would like that

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1 clarification by the 15th.

2 One other point I want to make to counsel  
3 so that they're aware I believe it's important that  
4 counsel be neutral of the fact that UMC scans in  
5 Post-its and other handwritten notes, and it is very  
6 likely that they are illegible.

7 And so when you're looking at those network  
8 file shares or scanned-in repositories, running key  
9 word searching on documents that aren't searchable  
10 might not be effective.

11 MS. WITTY: Right. Review would need to be  
12 visual.

13 SPECIAL MASTER GARRIE: Yes. That is  
14 correct.

15 MS. WITTY: Linear. That's the term,  
16 right?

17 SPECIAL MASTER GARRIE: Yes, it is  
18 actually.

19 Mr. Forrest?

20 MR. FORREST: Yes.

21 SPECIAL MASTER GARRIE: Do you want to talk  
22 about the personal file cabinet?

23 MR. FORREST: So we would like to know what  
24 is Mr. String's personal file cabinet with the  
25 Department of Labor investigation folders

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1 hand-printed policy drafts, and whether that has been  
2 searched. And to the extent that they're responsive  
3 materials, whether those have been preserved and are  
4 being produced.

5 SPECIAL MASTER GARRIE: I'm assuming they  
6 preserved the whole thing, but the question I have  
7 is -- you asked a very good question which is, is  
8 counsel for UMC aware of this cabinet?

9 MS. WITTY: This is counsel for UMC,  
10 Counsel Witty. And I actually did visually inspect  
11 the DOL investigation folder today. Everything  
12 inside it that is not attorney/client privilege has  
13 been produced.

14 SPECIAL MASTER GARRIE: Mr. Forrest, are  
15 you clear?

16 MR. FORREST: Yeah. I'm unfamiliar, and my  
17 involvement in the case is relatively new. I'm not  
18 aware of any production other than the ones that  
19 we've been discussing. And, you know, in terms of  
20 what's contained in that, we have not done an  
21 exhaustive look, or really any look at all, so...

22 MR. TOSTRUD: This is Jon Tostrud,  
23 plaintiffs' counsel.

24 Now that Ms. Witty has had an opportunity  
25 to look at the Department of Labor investigation



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1 file, I'm wondering if we can get a date of when the  
2 investigation was initiated?

3 MS. WITTY: I can give you an approximate  
4 time. I can't tell you on DOL's side. I can tell  
5 you that the complaint that was filed by a group of  
6 employees from UMC was done so in August of 2012.

7 MR. TOSTRUD: The earliest time period the  
8 documents that have been produced to plaintiffs have  
9 the earliest date of September of 2012.

10 MS. WITTY: Yes. That would be UMC's  
11 response. Like I said, I cannot tell you what the  
12 DOL has in their possession.

13 MR. TOSTRUD: When you visually inspected  
14 Doug Spring's cabinet with the DOL investigation  
15 folder, did that include any DOL-generated  
16 investigation report?

17 MS. WITTY: This is Counsel Witty. I'm not  
18 exactly sure what you're referring to with regard to  
19 the DOL report, or what they might have generated.

20 SPECIAL MASTER GARRIE: Can I -- this is  
21 Special Master Garrie. I'm going to suggest that if  
22 counsel for the plaintiffs wants to draft letters as  
23 to what their concerns are, and send it to me on or  
24 before the hearing of the 15th, we can cover it on  
25 the 15th. Otherwise maybe we can cover it on the

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1 22nd, and counsel for UMC, if you feel a desire or  
2 need to respond, I would request that then I receive  
3 a letter by the 18th, and I receive a response by the  
4 21st.

5 Moving forward.

6 MR. FORREST: Okay. The next section are  
7 references to lien from the custodian interviews,  
8 which will refer to documents being destroyed or not  
9 actively being preserved. Check spelling.

10 I think most of these we've already talked  
11 about.

12 With respect to e-mails printed for  
13 reference, discarded once issue dealt with, the  
14 concerns is whether any of these ever had any  
15 handwritten notes on them, and whether that can be  
16 established as to whether Ms. Panzeri was in the  
17 habit of making handwritten notes on these e-mails  
18 printed for reference, which were then discarded.

19 SPECIAL MASTER GARRIE: So, but there's --  
20 the focus is to ask questions where you need  
21 clarification. So I will again help you.

22 Have you had a chance to speak with  
23 Ms. Panzeri as to the issue that was just raised?

24 MS. WITTY: I have not specifically  
25 addressed -- this is Counsel Witty. I have not

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1 specifically addressed handwritten notes only on  
2 printed e-mails.

3 SPECIAL MASTER GARRIE: Given that she does  
4 allude to them in her custodial interview, she might  
5 scan -- this is Special Master Garrie. I would like  
6 to get further clarification if she did, indeed, scan  
7 them in, or preserve the notes. Otherwise, it's not  
8 fair to me.

9 Scratch my last three words.

10 Can counsel for UMC please seek further  
11 clarification?

12 MS. WITTY: This is Counsel Witty. I want  
13 to make sure that I am seeking the correct  
14 information.

15 You want me to clarify whether or not any  
16 e-mails printed for reference included handwriting  
17 that was scanned, or preserved otherwise?

18 SPECIAL MASTER GARRIE: Yeah. If she was  
19 printing e-mails, I want to know, and she was writing  
20 on them, I want to know what happened.

21 Let me try this a little differently. Has  
22 counsel been provided any printed e-mails by  
23 Ms. Panzeri with any handwritten notes on them?

24 MS. WITTY: This is Counsel Witty. No.

25 SPECIAL MASTER GARRIE: Can Counsel Witty

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1 please inquire with Ms. Panzeri as to what she was  
2 referring to, and seen examples of such, and inquire  
3 as to what happened to the e-mails, where she may  
4 have written handwritten notes on them, if they  
5 relate to this or are responsive to the document  
6 request?

7 MS. WITTY: Yes. Counsel can do that.

8 SPECIAL MASTER GARRIE: Mr. Forrest, I'll  
9 let you go through questions if you need any  
10 clarification around your questions?

11 MR. FORREST: Okay. Well, the first  
12 question is a reference to the hard copy reports for  
13 timekeeping, payroll, audit compliance kept in the  
14 fourth floor file room, as referenced in  
15 Ms. Panzeri's study information. Have they been  
16 produced?

17 SPECIAL MASTER GARRIE: One question at a  
18 time. Have they been produced?

19 MS. WITTY: This is Counsel Witty. These  
20 specific reports are not clearly responsive. The  
21 information contained within these reports have been  
22 produced through the opt-in packets.

23 SPECIAL MASTER GARRIE: Have all of these  
24 files been reviewed on the fourth floor by counsel in  
25 the file room?

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1 MS. WITTY: This is Counsel Witty. I did  
2 not go through every single drawer, no. I can tell  
3 you that these reports are not individualized.  
4 They're not something that is identified to a  
5 particular person. They are comprehensive reports.

6 SPECIAL MASTER GARRIE: Okay. All right.  
7 And then the next question from Mr. Forrest, that  
8 obviously is a good follow on, is what information is  
9 in the reports that's not in Kronos?

10 MS. WITTY: Everything that is tracked with  
11 regard to time and pay would be within Kronos or the  
12 opt-in packets.

13 SPECIAL MASTER GARRIE: And what he's  
14 asking for is in those reports that isn't in Kronos.

15 MS. WITTY: This is my understanding is  
16 that there isn't anything that would be in those  
17 reports that is not within Kronos or the opt-in  
18 packets.

19 SPECIAL MASTER GARRIE: Okay. I'm going to  
20 make a suggestion: Counsel for UMC, can you please  
21 speak with Jackie Panzeri and make sure that those  
22 reports that you have are all reports that are  
23 generated via Kronos?

24 MS. WITTY: Yes.

25 SPECIAL MASTER GARRIE: As I understand,

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1 plaintiffs have the entire Kronos database.

2 MR. TOSTRUD: This is Jon Tostrud, counsel  
3 for plaintiffs.

4 I think I would like to better understand  
5 what types of -- when you say these are comprehensive  
6 reports, they're comprehensive of what?

7 MS. WITTY: This is Counsel Witty. The  
8 entire payroll for UMC. Each pay period certain  
9 documents -- certain information is required to be  
10 maintained for each pay period. These are  
11 comprehensive documents of everything at UMC.

12 MR. TOSTRUD: And plaintiffs think and  
13 obviously consider those documents to be responsive  
14 and would like those produced.

15 MS. WITTY: I think that that is a  
16 subjective argument that is not within the scope of  
17 this discussion.

18 SPECIAL MASTER GARRIE: Again, well pointed  
19 out.

20 Counsel for UMC, Counsel Witty, I am not  
21 opposed to hearing argument on this. I would like to  
22 see a sample report provided to me for my review. I  
23 would like, again, the same if counsel -- if  
24 plaintiff does want to seek said report, I would like  
25 a three-page letter on the outside, meaning no more

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1 than, provided to me on or before April 18th.

2 MR. TOSTRUD: And Daniel -- are plaintiffs  
3 going to receive a copy of those reports as well? So  
4 we're able to make some argument about them?

5 SPECIAL MASTER GARRIE: Counsel for UMC, is  
6 there any privileged information? Do you have any  
7 objection to providing some redacted version of these  
8 reports for plaintiffs?

9 MS. WITTY: This is Counsel Witty. I am  
10 not currently able to do that.

11 MR. TOSTRUD: Able to do what?

12 MS. WITTY: I do not have the documents in  
13 front of me. I cannot tell you what would be --

14 SPECIAL MASTER GARRIE: I got it. I got  
15 it. Strike my last sentence.

16 Can Counsel Witty please, counsel with UMC,  
17 on or before 4/15 as to the substance of these  
18 documents and advise me one way or the other if they  
19 will be asserting or willing to provide a report to  
20 plaintiffs for analysis redacted or otherwise?

21 MS. WITTY: That is understood.

22 MR. TOSTRUD: And this is Jon Tostrud  
23 again. And I'm not trying to create more work for  
24 anyone. And I think it's important to note that  
25 these reports were specifically identified, and I'm

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1 happy to include this in a letter -- identified as  
2 part of the motion to compel in Magistrate Means'  
3 order.

4 SPECIAL MASTER GARRIE: I got it. So I  
5 look forward to reading your letter, and I look  
6 forward to making a ruling.

7 Does anybody have any objection to the  
8 schedule? A three-page letter, short, sweet and to  
9 the point.

10 Counsel for UMC?

11 MS. WITTY: This is counsel for UMC. Was  
12 there a schedule set up for any response or rely?

13 SPECIAL MASTER GARRIE: If you feel the  
14 need to. So I have written down the date of 4/15.  
15 You'll inform the parties and myself if you're  
16 willing to provide a report, redacted or otherwise,  
17 to plaintiffs.

18 And plaintiffs, I will make a ruling -- I  
19 would like to know before 5:00 p.m. I will make a  
20 ruling on 4/15 whether or not to compel the  
21 production of said report.

22 Plaintiff will provide a written brief, no  
23 more than a three-page letter, for the request, and  
24 UMC will be able to respond on or before the 21st.

25 MR. TOSTRUD: And plaintiffs, just for the



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1 record, are reserving all rights to seek continuing  
2 sanctions.

3 SPECIAL MASTER GARRIE: So noted for the  
4 record.

5 MR. FORREST: Should I read?

6 SPECIAL MASTER GARRIE: Yes, please.

7 MR. FORREST: Okay. So let me just clarify  
8 here. The question is being asked separately with  
9 respect to Kronos and with respect to the packets.

10 Kronos is the full Kronos database, and  
11 everything that we can do with the database.

12 We have very powerful tools at our disposal  
13 you know, database tools and so forth.

14 The information in the packets, the packets  
15 consist of PDFs of scanned images of reports and of  
16 other files. There's no text in them. We have OCR'd  
17 a sample to take a look.

18 So obviously, if things are Kronos, it's a  
19 lot easier to access.

20 And then the question is, is the material  
21 in those hard copy reports that are being kept in the  
22 fourth floor file room, which are not -- at least  
23 with respect to the opt-in and named plaintiffs, in  
24 the packets.

25 SPECIAL MASTER GARRIE: Basically what

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1 you're asking is, is there any information in the  
2 these reports in the fourth floor file room that is  
3 responsive that speak to -- that was not provided  
4 either in the packets or in Kronos; is that accurate?

5 MR. FORREST: Yes.

6 SPECIAL MASTER GARRIE: Okay. Perfect.

7 Counsel for UMC, you have until 4/15 to  
8 answer that question, as well as whether you'll  
9 provide the report.

10 MS. WITTY: Understood.

11 SPECIAL MASTER GARRIE: Okay. I'm going to  
12 take over from here, Mr. Forrest, and take the  
13 last -- I'll the robocopy log part for the broad  
14 discussion with everybody.

15 Have counsel sought further clarification  
16 from JP? Have you seen everything she has? When she  
17 says a professional pack rat, you know, I understand  
18 that, you know, people refer to things and metaphors  
19 and et cetera.

20 But have you had a chance such that you  
21 have been able to gather or gain access to all the  
22 information and documents that she's referring to  
23 that may be relevant?

24 MS. WITTY: This is Counsel Witty. Yes, we  
25 do have full access. The vast majority of what she's

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1     referencing are those same payroll, timekeeping,  
2     audit compliance records that are stored on the  
3     fourth room file room.

4             She's merely -- she's merely expressing the  
5     fact that she is diligent in her job.

6             SPECIAL MASTER GARRIE: Okay. So noted for  
7     the record.

8             I assume we'll have further discussions on  
9     the 15th and certainly on the 22nd about the reports  
10    that she keeps on the fourth floor.

11            I do want to make sure, the full  
12    timekeeping and payroll databases that she  
13    references, I think we already covered this, but you  
14    will confirm that she is referring to only one  
15    system, or what system she's indeed referring to?

16            MS. WITTY: Yes.

17            SPECIAL MASTER GARRIE: Thank you. Now,  
18    the next question is actually fairly relevant, and I  
19    stand remiss for missing it myself -- well, strike  
20    that. Never mind.

21            One question is: Does UMC record log-ins,  
22    local and via TS Web? Meaning I would like -- and I  
23    actually want this as well. I would like to know  
24    what log-in capabilities are available for TS Web. I  
25    would like a full set of logs for the six custodians,

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1 going back as far as they go.

2 MS. WITTY: Just for clarification. This  
3 is Counsel Witty. When you say a full set, are you  
4 regarding just TS Web?

5 SPECIAL MASTER GARRIE: I want to know if  
6 any remote access via log-ins, local or remotely, via  
7 the TS Web interface.

8 MS. WITTY: Okay.

9 SPECIAL MASTER GARRIE: For those six  
10 custodians.

11 I would also like a log of any remote  
12 access done by any other six custodians as far back  
13 as UMC keeps, for TS Web or any other system.

14 Mr. Pixley, is there anything you would  
15 like to add?

16 MR. PIXLEY: This is Bruce Pixley. When I  
17 think when you asked about these logs, they may  
18 understand them to be security event logs. So that  
19 may be a term that you want to use. But they may  
20 also have other types of logs as well, not just the  
21 Microsoft security logs.

22 SPECIAL MASTER GARRIE: Specifically, I  
23 would assume that they have -- thank you very much,  
24 Mr. Pixley.

25 So let me give you a little more detail

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1 here. I want firewall logs for any remote in-bound  
2 traffic access that's been approved through VPN.

3 I want the network security logs. I want  
4 any VPN log-in software. I would like the log files  
5 off of that.

6 Anything else you can think of, Mr. Pixley?

7 MR. PIXLEY: I think once we have an  
8 understanding of the type of logs they maintained,  
9 that we may have other questions. But we don't even  
10 know what they're currently logging at the time.

11 SPECIAL MASTER GARRIE: So again,  
12 Mr. Pixley makes a good.

13 Can UMC provide a list of what they do  
14 log -- what UMC does keep from a logging perspective  
15 with regards to accessing systems?

16 MS. WITTY: This is Counsel Witty. We  
17 understand, and we will work on that.

18 SPECIAL MASTER GARRIE: Off the record.

19 (A discussion was held off the record.)

20 SPECIAL MASTER GARRIE: The last thing to  
21 discuss is robocopy. I'll let Mr. Forrest and  
22 Mr. Pixley explain their recommendation.

23 MR. PIXLEY: This is Bruce Pixley. When I  
24 reviewed the robocopy logs, there were references  
25 that some of the e-mails, such as PST files, were not

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1 collected.

2 And so now that I understand the backup  
3 system, if there is a robocopy log that references a  
4 missed PST file that wasn't collected, and it's part  
5 of a backup, my preference would be that they obtain  
6 a copy of that PST file from the oldest backup, as  
7 opposed to the current location.

8 The other thing is the robocopy logs that I  
9 have is from August 2013, and I understand there may  
10 be robocopy logs from the first collection, so I  
11 can't speak to those because we haven't reviewed  
12 them.

13 SPECIAL MASTER GARRIE: So I have reviewed  
14 them, and I also if you remember in the last hearing,  
15 one thing I was very concerned and focused on was the  
16 error files, or files that they weren't able to copy  
17 properly. And they're supposed to put together a log  
18 of those files and what they were.

19 And obviously, once I receive that, which I  
20 believe is -- I'm not sure when I am to get that, but  
21 as soon as I get that, I will obviously make a  
22 ruling, not only for the PST files, but the other  
23 files.

24 I certainly do intend to take the oldest  
25 backup copy of any PST file that should have been

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1 reserved that wasn't preserved, and have them go from  
2 that. That would be the best source at this point of  
3 the game.

4 MS. WITTY: This is Counsel Witty for UMC.  
5 We understand that and are coordinating that with  
6 Dean Schaibley at UMC.

7 SPECIAL MASTER GARRIE: Mr. Pixley, does  
8 that sound acceptable to you? Or would you like to  
9 modify my suggestion?

10 MR. PIXLEY: No, I think that was spot on.

11 SPECIAL MASTER GARRIE: I mean, that was my  
12 whole entire intent the first time. My big concern  
13 to even now is that exact issue, that there are PST  
14 files that script did not catch and given. It's just  
15 important that we identify all of them, and there was  
16 a multitude of logs. And I know that counsel for UMC  
17 is working through them.

18 I would also like the record to reflect  
19 that I would have expected certainly somebody via  
20 their forensic, the first forensic person or their  
21 second forensic, anybody that was supporting UMC's  
22 counsel or UMC and UMC's collection -- let me try  
23 this again. Strike that and let me try this again.

24 I would have expected under best practices  
25 that UMC, who ran the script and informed counsel at

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1 this time of the errors that occurred during the  
2 collection.

3 I would have also expected the forensic  
4 expert, either original or current, to have expected  
5 said logs, and informed UMC's counsel of the  
6 potential error issues that did exist at that time.

7 And I would like the record to reflect  
8 that.

9 Counsel for -- I have no other comments in  
10 regards to custodian collection.

11 Counsel for UMC.

12 MS. WITTY: I'm sorry, you were cut off. I  
13 don't know if you were finishing your thought?

14 MR. FORREST: This is Doug Forrest. If I  
15 might, I would just like to add one additional  
16 comment before we move off the subject of the  
17 recommendation.

18 SPECIAL MASTER GARRIE: I couldn't hear.  
19 Mr. Forrest what was that?

20 MR. FORREST: With respect to the  
21 recommendation, my understanding would be that we  
22 have a -- possibly with respect to any given  
23 custodian, we would have at least three PSTs, one  
24 from April, one from August, and the current version.

25 And there may be different data in all of



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1     them because of deletions, and obviously because of  
2     data that's been created post August 2013.

3                 So I think that all three of them are  
4     required, and they can be duplicated and so forth.

5                 But not just the one from the oldest one  
6     from the backdrop system.

7                 SPECIAL MASTER GARRIE: Well, let's look at  
8     the list. I'm going to take the oldest -- let's see  
9     what we have on the backup system first. Let's first  
10    identify the file, and then we'll come up with the  
11    protocol to do the collection.

12                Because if you review the backup policies  
13    that they have, I think what I ordered was I think  
14    what I ordered was -- I think what I ordered, and I'm  
15    not trying to reverse my order from the original  
16    hearing, which is for any file that wasn't collected  
17    that should have been collected, I believe what it  
18    was is that to pull the oldest back up in the current  
19    copy, the current state, and then accordingly. But  
20    we will find out what those specific files are and  
21    address it at that time.

22                So I'm going to note your request for the  
23    record, and we'll make the ruling at a later date.

24                MR. FORREST: Thank you.

25                SPECIAL MASTER GARRIE: Counsel for

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1 plaintiffs, do you have any other questions or  
2 concerns you would like to discuss regarding the  
3 custodian interview forms? Hello?

4 MR. FORREST: Hello? This is Doug. Who  
5 else is still on the line?

6 MR. PIXLEY: Bruce is here.

7 SPECIAL MASTER GARRIE: Special Master  
8 Garrie is here.

9 MS. WITTY: UMC is here.

10 MR. FORREST: Marc?

11 MR. GODINO: Yes.

12 MR. FORREST: Reporter?

13 THE COURT REPORTER: Yes.

14 SPECIAL MASTER GARRIE: So without further  
15 ado, counsel for the plaintiffs, do you have any  
16 further comments or remarks regarding the custodian  
17 interviews?

18 MR. FORREST: This is Doug, I don't.

19 SPECIAL MASTER GARRIE: Counsel? Counsel  
20 for plaintiff?

21 MR. GODINO: This is Marc. Sorry about  
22 that. In answer to your question, plaintiffs'  
23 counsel doesn't have any further questions regarding  
24 the custodian interview reports.

25 SPECIAL MASTER GARRIE: Okay.

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1 Counsel for UMC, is there any additional  
2 supplemental information you would like to provide at  
3 this point?

4 MS. WITTY: Not at this point.

5 SPECIAL MASTER GARRIE: If there any  
6 additional supplemental information necessary or  
7 required, I request that you send it to me as soon as  
8 possible, and as last time, clean it up as necessary  
9 and circulate to parties, subject to the same process  
10 as before.

11 MS. WITTY: That is understood.

12 SPECIAL MASTER GARRIE: Thank you everybody  
13 very much. I think we made good progress.

14 And I appreciate everybody taking the time  
15 and the effort to send me their notes and their  
16 summaries. And I will do my best to turn around an  
17 order summarizing, clarifying and memorializing the  
18 prior three hearings.

19 MS. FOLEY: Thank you, Special Master.

20 SPECIAL MASTER GARRIE: Thank you.

21 (Concluded at 6:51 p.m.)

22

23

24

25

# Exhibit D

# PANZERI

Confidential

[CUSTODIAN INTERVIEW REPORT FOR JACQUELYN  
PANZERI, COMPLETED MARCH 26, 2014]

TO: Daniel Garrie, Esq.  
Electronic Discovery Special Master

FROM: Cayla Witty

*Revised and produced per Special Master Order*

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Jacquelyn ("Jackie") Panzeri, Payroll/Accounting Manager, contact info: via counsel.

No formal education related to position. Attended beauty school. Has been with UMC 24 years and 4 mo., worked her way up through payroll systems. Oversees all processing of electronic transactions for timekeeping and payroll.

Relevance to *Small* suit: ran reports on individuals for DOL investigation, assisted with document production, communicated about payroll documentation through email to HR department

Creates mainly email. Tracks reports and other electronic processing on computer through Kronos/SAP. If receives hard copy of document, she will keep. (See more on filing systems below).

Hard copies

General description of location of files: if printed email for reference, email would be discarded once issue is dealt with. Occasional handwritten notes (post-its, etc.) to place reminders, keeps a personal paper calendar, but not work-related. Policies and reference materials kept in office. Otherwise, hard copy reports for timekeeping/payroll/audit compliance (i.e., corrections to pay records tracked, donated leave forms, pay period reports, mandated deductions/taxes, warrants for release of county funds, etc.) kept in 4th floor file room, 6th floor storage (both in Trauma building). Professional "packrat" because so much documentation is required for payroll/auditing. Reports for past year are in on-site filing. Go to Iron Mountain after 1 year (or if space is exceeded).

All filing organized by pay period. Jackie has 4 staff people that assist with report generation and filing. Those staff maintain the 4th floor filing. Then when no more room, move oldest stuff to 6th floor storage. Finally, after a year, can move to long-term Iron Mountain storage.

Jackie keeps an Org Charts for nursing leads (timekeepers), but not any other. She has copies in office of payroll policies and procedures, but hasn't revised in recent history. All others accessible on intranet.

ESI

Computer usage: daily, heavy report and data entry responsibilities for Kronos/SAP. Desktop in office, no laptop, no other UMC device.

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[CUSTODIAN INTERVIEW REPORT FOR JACQUELYN  
PANZERI, COMPLETED MARCH 26, 2014]

## Desktop

Unsure of how long desktop used. Several years. Uses dual monitors, one is more recent development(within last two years or so).

This is the device Ms. Panzeri used during the relevant time period. It is still in custodian possession. UMC IT was responsible for any hardware/software upgrades or data migration.

## Applications

Mainly timekeeping software - Kronos/SAP, some office suite (excel, word). Doesn't use any healthcare-specific applications.

Track versions/revisions/drafts: doesn't create a lot of revised documents. Must save reports as different each time run. Saved based on date run.

Prefers electronic copy only. Certain records must be maintained hard copy for auditing (storage addressed above).

Saves everything to network server (possibly home folder). Claims doesn't know how to save "locally." Full timekeeping and payroll database is on network server.

Encryption/Passcodes: Very specific encryption due to level of access to timekeeping/payroll data. Separate passcodes for each application.

What about email? (counsel is working on a hard copy print screen of the inbox organization) No personal file system, but backs up everything in archiving. Organizes archived emails by topic or sender. Does not file sent mail. Has a separate archive for *Small* lawsuit and DOL investigation. Doesn't know of any recent policy changes. Recent emails on *Small*? claims never had much on substance, just ran reports during DOL investigation and produced information in response to requests for production from counsel.

Uses UMC distribution list for Payroll Dept. Created her own "distribution list" for timekeepers (people who make changes in Kronos).

## Handheld Devices

No UMC device. Personal device is Galaxy S3 (ATTservice) smartphone. Has had for 8 to 9 months, previously had a PanTech phone. No data migration as her old phone was sent to her son. Very limited texts, only with family; none relevant to *Small*. Is her only personal phone line, but not listed in UMC contact directory. Doesn't sync or track her data as husband handles bills/logs, etc. Doesn't know UMC policy because phone is personal use only. Does use a passcode for access.

## Instant Messaging

IM is very new at UMC, only communicates with Claudette Myers, examples: when to join lunch; none relevant to *Small*. Doesn't personally store IMs.

Removable media: None. Does not use Dropbox or similar services.

Remote Access: doesn't work from home. Can access email through webmail, but doesn't log in through TS Web. Doesn't keep any documentation at home.

## Other

Involvement in case: due to maintenance of records, some policy influence, very important to keep good records.

Expect continuing requests, understands continuing obligation to retain and supplement documents

Non-identical documents: none at issue.

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[CUSTODIAN INTERVIEW REPORT FOR JACQUELYN  
PANZERI, COMPLETED MARCH 26, 2014]

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Unincorporated Special Master follow-up question:

- Did Ms. Panzeri ever create a local backup of here data before and/or after data migration?

*Counsel requested additional clarification.*



# MUMFORD

Confidential

[CUSTODIAN INTERVIEW REPORT FOR JAMES  
MUMFORD, COMPLETED MARCH 26, 2014]

TO: Daniel Garrie, Esq.  
Electronic Discovery Special Master

FROM: Cayla Witty

*4-6-14 revised and produced per Special Master Order*

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James Mumford, Sr. Human Resources Analyst, contact via counsel.

Education: BA in Political Science, Masters in Public Administration emphasis in HR. Has been with UMC 13 years. Work with administration and union on policy and procedures as defined by the CBA, oversees all FMLA for UMC, address HR compliance for certain departments.

Relevance to *Small* suit: oversees HR compliance for admitting representatives

Creates following types of documents: FMLA requests/reports, approval/denial letters, notifications and medical request forms, draft counseling forms, question outlines for investigations, disciplinary hearing information (position statements), reports on shift bids, FMLA presentations, supervisor boot camp training documents, immigration paperwork

#### Hard copies

HR department files for grievances, everything gets printed to hard copy for formal grievances, if informal complaint made, James may have personal file to address the situation or follow-up as needed, but not placed into formal folder until others involved. FMLA kept in HR until closed. Training documents are stored in Delta Point building Does not keep files away from office personally. Grievances will eventually move to Iron Mountain (based on space, not time frame). Delta Point handles repositories of trainings and presentations that are standardized (not something created by James personally). Closed immigration and FMLA files go to Iron Mountain.

HR has storage rooms in Trauma Building and Delta Point. Sent to Iron Mountain when space needed.

James is often involved in employee-engagement programs that involve marketing and employee handouts, so he has personal copies of those in his office filing cabinet.

#### ESI

Computer usage: daily, Desktop in office. No UMC laptop or tablet. Has a personal laptop; used personal laptop for business with wireless access and TS Web for the SEIU labor negotiations in 2009 for typing notes. James Mumford's personal laptop was not purchased or reimbursed by UMC. It was not preserved at time of collection. Has UMC blackberry. Uses BB as personal and work cell phone.

Desktop- Unsure of how long desktop used. Several years. Desktop maintenance is completely monitored and updated by UMC IT Security/Server team.

**Confidential****[CUSTODIAN INTERVIEW REPORT FOR JAMES MUMFORD, COMPLETED MARCH 26, 2014]**

### Applications

Likes excel spreadsheets, used to prefer Microsoft Access (create databases local to his desktop) (UMC hasn't supported Access in relevant period), uses word and powerpoint, tracks revisions through saving separate documents.

Prefers to save everything electronically. Must print out grievance files and investigation files. Some FMLA has specific filing requirements which require hard copies.

Mainly saves to shared drive (unsure if department or home folder), some negotiation notes on Desktop or saved in My Documents folder (C: Drive local).

Uses separate passcodes for computer and blackberry.

Email: Inbox print screen attached. Knows of no recent UMC policy changes.

Doesn't personally delete anything but doesn't personally archive information. As grievance material is always duplicated by printing, doesn't have a separate personal practice for archiving. Recent emails on *Small?* Doesn't think so. Doesn't use email lists.

### Handheld Devices

UMC-issued Blackberry 9330 (specific model identified by UMC IT), received on April 1, 2011. Previously had basic flip phone (not text enabled / shredded after turned in by Mr. Mumford). Takes it to PBX (UMC Telecommunications Supervisor) for upgrades and maintenance, possibly every 3-4 months. Any data migration / back-up performed by UMC telecommunications. UMC used to provide call logs, etc. for review but no longer does so. All information is maintained by PBX. Following dates relate to specific upgrades.

- Blackberry 9330 on Feb 6 2012; and
- Blackberry 9330 on Sept 15, 2011.

### *Clarification at request of Special Master:*

- What did Mr. Mumford mean when he said PBX -- Private Branch Exchange? Can Counsel please obtain and provide all UMC policies relating to the PBX? Data migration? Backup relating to the PBX system? Clarify if the PBX store voice mail messages? Did the PBX serve as an archive for unified messaging system communications? If so, did UMC include this in the collection?

The voice mail system is Call Pilot v.5.00.41.167. The voice mail system uses an external tape system and is backed up weekly every Monday evening. It does store the voicemail messages currently held in each mailbox but it is overwritten every Monday evening.

The PBX is not a unified messaging system. UMC uses an Avaya Blue (formerly Nortel) CS1000 v.5.5 PBX for communications. The telephone switch is backed up to an internal drive nightly during its midnight routine. The previous backup is overwritten nightly on this internal drive as part of its midnight routine. This was not included in the collection.

Mumford does not sync his phone. Everything on phone is accessible to UMC through server so no personal maintenance required. Does have passcode enabled.

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[CUSTODIAN INTERVIEW REPORT FOR JAMES  
MUMFORD, COMPLETED MARCH 26, 2014]

Texting is mainly personal, not very prolific. Deletes personal texts from wife regularly. No texts relevant to *Small*. Informed not to delete texts now.

Instant Messaging - just got access through Outlook three weeks ago, has used only 2 or 3 times with HR office personnel, none relevant to *Small*. Does not personally store. Believes contacts are within HR dept. (Leah Conedy, John Espinoza)

Removable media: None. Cannot burn data discs.

Remote Access: Doesn't work from home. Has remote access through TS Web, occasionally uses for meetings with labor.

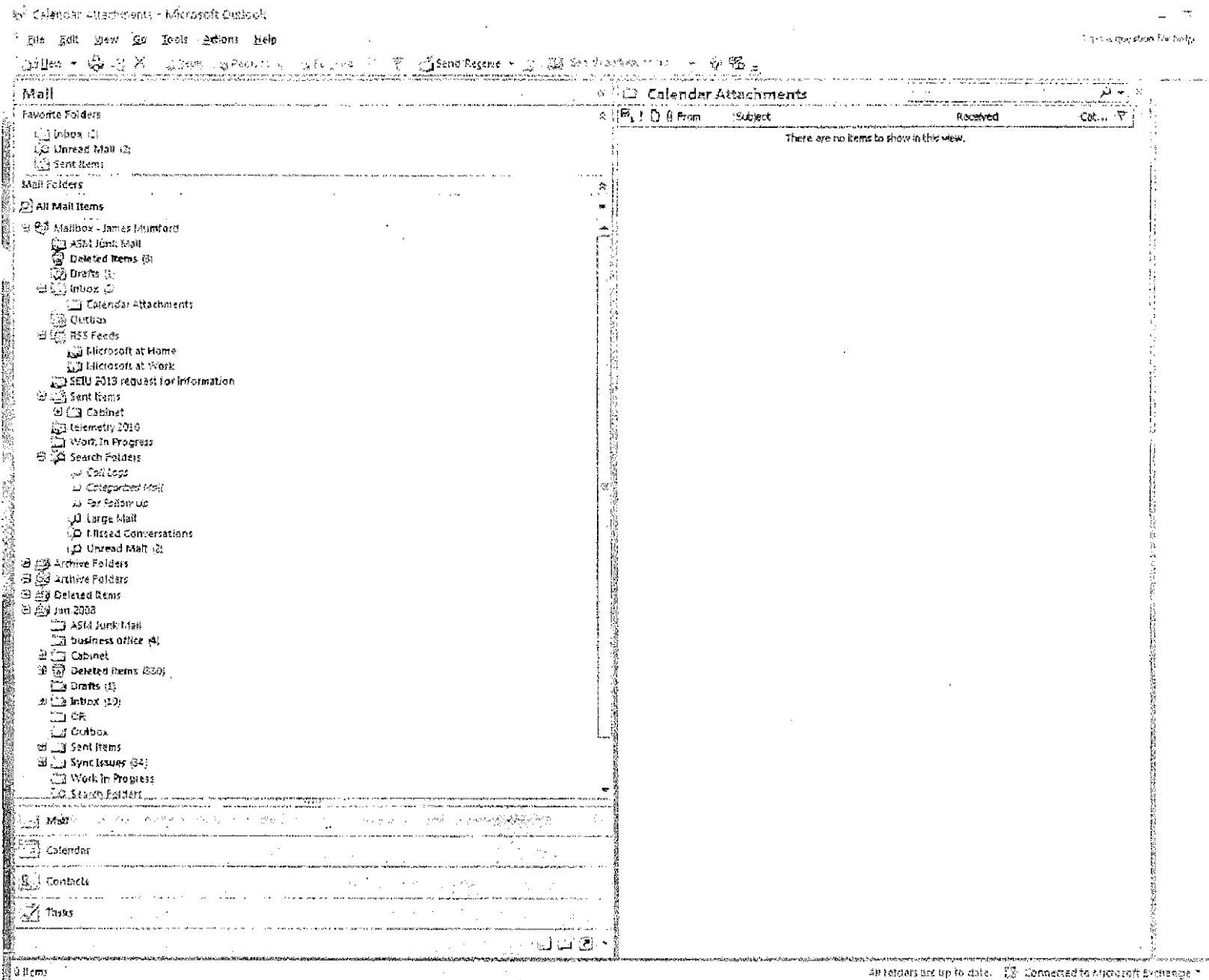
External document preservation? Likely has copies of SEIU binders at home, but doesn't formally keep anything away from office.

#### Other

Involvement in case

Due to receipt of complaints/notice from plaintiffs, policy influence. Told to expect continuing requests, understands continuing obligation to retain and supplement documents.

Non-identical documents: none at issue.

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# BRANNMAN

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[CUSTODIAN INTERVIEW REPORT FOR BRIAN  
BRANNMAN, COMPLETED MARCH 31, 2014]

TO: Daniel Garrie, Esq.  
Electronic Discovery Special Master

FROM: Cayla Witty

*4-6-14 revised and produced per Special Master Order*

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Brian Brannman, former UMC CEO, currently CEO with St. Rose Hospitals/Dignity Health, contact via counsel.

Bachelors from Southern Illinois-Carbondale, healthcare administration. Worked with the military in healthcare logistics. M.A. from Webster University in management, M.S. in finance

Started with UMC in April 2008 as Chief Operating Officer. Transitioned to CEO in April 2011.

Created Mostly emails (gathering info, requests for action, relaying information), generally correspondence was prepared by others for his signature or dispersal. If going to large group, his executive assistant (Cindy Dwyer) or the head of the area (HR, Patient Care, etc.) would disseminate his communications. If it came from him personally, it was his communications covering day to day operations, creating new independent oversight board, and management of physician residency program.

#### Hard copies

Office located on 5th Floor of Trauma Building. Didn't keep hard copy calendar, good memory prevented need to print emails, etc. for reference. Any hard copy documents were likely copies provided by others. Did not keep personal filing. Actual documents within file cabinets in office are probably from predecessor.

Took a lot of personal notes on yellow pads. Would "pitch" (i.e., shred) once filled. If needed to retain notes, provide yellow pad to Cindy to file. Retrieve through her files.

#### ESI

Computer usage- daily. Had desktop in office and was given laptop for travel. Never used laptop, stayed in bag under his desk. Had access to log in from home, but didn't use it. Felt email connection through blackberry sufficed for majority of communication.

Smartphone- Original UMC device was a Blackberry Curve 8530, received on February 1, 2011. Upgraded to a Blackberry Curve 4 on July 19, 2013. Both phones have been wiped as Mr. Brannman left UMC in January 2014, but the devices are likely still being held by UMC. IT responsible for upgrades. Cindy contacted IT for particular service. Syncing was all through server; automatic from IT. Very concerned with passcode on phone as he needed to maintain patient information security.

Texted occasionally. Text would be with external contacts such as physicians asking about contracts, etc.; not internal activities. Don't believe any were relevant to Small. He

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[CUSTODIAN INTERVIEW REPORT FOR BRIAN  
BRANNMAN, COMPLETED MARCH 31, 2014]

did not delete any; kept his threads as they came in. Main contacts were med school dean, Dr. McBeth (advisory Board Member), Dr. Spirtos.

Call logs - IT would send quarterly copy of account to assess need for adjustments in use, etc. There was an issue earlier on in tenure for bills including texts when Brannman was not using texts.

Didn't retain his voicemail. Cindy was able to monitor voicemails and would remind Brannman of entries.

Personal Iphone, kept completely separate. Upgraded from Iphone 3 to 5. Never accessed UMC email from iphone.

Applications: used Office Suite- Outlook, Word, Excel. Nothing healthcare specific. Others (Chief of Nursing) might print reports from Excel or ppt or him to review. Specifically avoided recent upgrade for electronic med records called medseries four as he personally found it too cumbersome to use. Would receive printed reports from patient service leaders.

Didn't personally save revisions separately. Cindy might when a document was sent to her for printing. Saved most documents to desktop (My Document folder). Did place large documents on share drive for group review, etc. Didn't keep correspondence on shared file. Kept everything purely electronic.

Knows that Cindy (Exec. Asst) could monitor his email and other communications through network, but had different access codes. Kept separate intranet page for evaluations, no one else had his log-in information.

Email: Originally set a bunch of folders up, but too much volume to maintain filing. Keep in inbox and then block copy for archives. Also done with Sent emails. Remembers County policies (particularly document retention) were updated c. 2010. Ernie McKinley assisted with review, archiving and data destruction policy. Doesn't recall any recent emails re: *Small*. May have notice of something from John Espinoza.

Knows that Cindy would send email to all employees/UMC mailboxes through UMCPOST. Also used a group email called BRIEFINGS which sent information to media, and used to advise all county commissioners and advisory board of information. Has an Apple mail account (personal). Never used for work. Didn't take anything but his personal contacts when he left UMC. No UMC documents at home or new office.

Instant Messaging- wasn't available during his tenure.

Removable media - none.

Remote Access - didn't like to work from home. Never took documentation home for patient information security. Could access email on phone so no need to travel with laptop or other devices.



# ESPINOZA

Confidential

[CUSTODIAN INTERVIEW REPORT FOR JOHN  
ESPINOZA, COMPLETED MARCH 26, 2014]

TO: Daniel Garrie, Esq.  
Electronic Discovery Special Master

FROM: Cayla Witty

*4-6-14 revised and produced per Special Master Order*

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John Espinoza, Title: Chief Human Resources Officer, contact via counsel.  
Education: BA from University of Texas in organizational communications. Masters in Public Administration from Texas State University, emphasis in HR. With UMC 14 years, 4 more with County HR functions, position has been upgraded several times but duties similar. Oversees all HR functions for UMC, including but not limited to compensation, employee assistance, benefits, systems management, records management, contract negotiations, administrative counsel to CEO and Hospital Board.  
Relevance to *Small* suit: Chief of HR, deposed early on in suit. Direct contact with DOL.

Creates position papers, reports on activities, summaries of HR issues for admin, email to supervisors and staff

Hard copies

Most documents John creates are saved electronically by Claudette Myers, his assistant. If he needs a particular reference, he will keep a hard copy in his office filing. Does not create a large amount of paper work. He knows large projects are stored off-site. He has a weekly calendar printed off for him, but it is a duplicate of Outlook and is discarded weekly. (Latest example attached.)

John does not keep any specific filing as Claudette manages his office. He knows his office oversees significant filing (grievances, union negotiations, payroll, etc.) but is not responsible for managing it personally. Claudette maintains org chart. Policies and procedures mainly delegated to Doug Spring.

ESI

Computer usage: daily, Desktop in office, Blackberry from UMC. No laptop, no other UMC device.

Desktop

Unsure of how long desktop used. Several years. If it has been updated, that is a UMC overhaul and handled by Chief Information Officer or delegate.

Applications

Works mainly in word, and lots of emails through outlook. Reviews excel, but doesn't create documents in that program. Doesn't track revisions in most documents. Hates to use track changes. Also usually relies on legal support staff or James Mumford to follow revising contract language in union negotiating.

Claudette maintains electronic filing for John. He will email her information and she saves to shared folder. Claudette will determine what needs to go to HR dept drive John saves mainly to personal drive on network (home folder), but believes Claudette has

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CUSTODIAN INTERVIEW REPORT FOR JOHN  
ESPINOZA, COMPLETED MARCH 26, 2014

access. There is likely some information on desktop C: Drive. Claudette also scans in hard copies for archiving as needed. While Claudette has access to files, his passcode is personal and separate.

Email: not aware of any recent policy changes. Generally aware of limits on storage space, but administration has more reserved space. His outlook Auto-deletes SPAM (gets a lot of diet plans and fake hospital newsletters). Claudette handles any necessary regular email archiving. Believes only folders within inbox are default Outlook settings. Printscreen attached.

Recent emails on *Small* are all counsel requests for documentation. There was some mention (likely from counsel) regarding a new suit that is related to *Small* collective action. Also may have communicated with new CEO in 2014 regarding status update on lawsuit.

Doesn't use email lists, as he sends mass emails through Claudette. Is aware of distribution lists generally.

## Handheld Devices

PDA/Tablet/Smartphone: Blackberry through UMC. same mobile device during the relevant time period, Blackberry Curve 8530. Updated twice on the following dates:

- Blackberry Curve 8530 on Jan 20, 2011;
- Blackberry Curve 8530 on Sept 22, 2008.

Understands blackberry syncs through server. Used to see phone records to acknowledge and pay for personal use. Now, it is identified as required for work and listed as a work contact number. Cannot download personal applications, etc. on phone. It is passcode enabled.

Uses an Iphone 3s personally. Has personal tablet. Doesn't sync information. Does not mix use of personal and work devices. iPhone and iPad are completely personal.

Texting: Prefers actual conversation, but will text in response to work requests on Blackberry. None relevant to *Small*, except possible request from new CEO, which may actually more likely be email viewed on Blackberry.

Instant Messaging- very new, new CEO really likes it, none relevant to *Small*. Doesn't personally store these messages.

Removable media: None. Sometimes Claudette will burn discs of scanned information for storage, but John doesn't.

*Clarification for Special Master:*

- ❖ • What happened to the "discs of scanned information for storage" Mr. Espinoza states were created in his interview? Were these discs preserved? Where are they stored? Were they included in the collection? Production?
- ❖ *The discs of scanned information for storage are sent to long-term storage with Iron Mountain. All such discs would have been preserved through this off-site storage. After Ms. Myers' custodian interview, the volume of such discs is very limited. Specifically, Mr. Espinoza was referencing scanned documentation from the past CEO search in 2008 and 2009 which was not*

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[CUSTODIAN INTERVIEW REPORT FOR JOHN  
ESPINOZA, COMPLETED MARCH 26, 2014]

*sent to storage on disc. Ms. Myers actually did not send data discs to storage.*

Remote Access: doesn't like to work from home. TS Web too difficult to use. Can't remember his log in information. Plus he can get email/calendar on his blackberry. Doesn't keep any documents at home.

Other

Involvement in case: key, only deposition testimony on record, Chief HR, involvement with DOL investigation, etc., Expect continuing requests, understands continuing obligation to retain and supplement documents

Non-identical documents: possible electronic copies of the reference materials he maintains in office filing cabinet. None otherwise.

March 31, 2014 -  
April 04, 2014

March 2014							April 2014						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
						1							
2	3	4	5	6	7	8	6	7	8	9	10	11	12
9	10	11	12	13	14	15	13	14	15	16	17	18	19
16	17	18	19	20	21	22	20	21	22	23	24	25	26
23	24	25	26	27	28	29	27	28	29	30			
30	31												

	Monday	Tuesday	Wednesday	Thursday	Friday
	<p>Brenna: Leasing; Recruitment &amp; Retention</p> <p>Debbie R: 8hrs FMLA; Raquel Johnson</p> <p>Gail Y: 8hrs Cal; Raquel Johnson</p> <p>Gregg F: 3/28-3/31 Admin Leave/Cal</p> <p>Rafina P: 3:00p-4:30p Cal; Claudette Myers</p>	<p>Claudette M: 10:30a-11:30a Tel Interview</p> <p>Claudette M: lvg @12pm; Claudette Myers</p> <p>Wendy K: 3/28-4/8 Cal; Claudette Myers</p>	<p>Patricia K: Wkg 8:00a-3:00p (5L/1.5 Cal)</p> <p>Rhonda W: 4/2-4/4 Cal; John Espinoza</p> <p>Wendy K: 3/26-4/8 Cal; Claudette Myers</p>	<p>Jamie M: 4/3-4/4 Cal; Raquel Johnson</p> <p>Peter B: 2:00p-4:30p Cal/OFF; Claudette My</p> <p>Rhonda W: 4/2-4/4 Cal; John Espinoza</p> <p>Wendy K: 3/26-4/8 Cal; Claudette Myers</p>	<p>Ernie M: Chrs Admin Leave; Raquel Johnson</p> <p>Jorri Strasser's Last Day: 4/4/14 (?); Claude</p> <p>Loeb C: 4/4-4/7 Cal; Claudette Myers</p> <p>Prabha I: 8hrs Cal; Doug Spring</p> <p>Rhonda W: 4/2-4/4 Cal; John Espinoza</p> <p>Wendy K: 3/26-4/8 Cal; Claudette Myers</p>
7:00					
8:00					
9:00	<p>New Employee Orientation Emerald Room; Cindy Dwyer</p>		<p>Weekly Ops CR ADMIN Raquel Johnson</p>	<p>Discuss Urban letter w/Doug (call to Riccardi?)</p> <p>John/James</p>	<p>Weekly Ops CR ADMIN Raquel Johnson</p>
10:00	<p>Dr. Vohra re: <span>John/Ernie- Standby</span> <span>Review ethics</span></p>			<p>Discuss Urban letter w/ Riccardi</p>	<p>Special Director's Mt CR 18a; Raquel Johnson</p>
11:00	<p>Payroll Audit Admin Conf Rm</p>	<p>Information Request from HR &amp; Exec Compen HR Conf Rm; Claudette Myers</p>	<p>Labor/Management Meeting HR Conf Rm; Claudette Myers</p>	<p>Larry/John: BiWeekly Larry's Office; Raquel</p>	<p>John/Nina: Standing JE's Ofc, Trauma Bl</p>
12 pm			<p>BD Lunch Lola's Prabha Iyengar-Cox</p>		<p>Lunch The contents of this appointment have been updated. Open this appointment to see the</p>
1:00			<p>Conf Call: Morrison Client Satisfaction Survey They will call us</p>		<p>Call David L x3714 (9 Issue &amp; Long Line vs Interpreters)</p>
2:00	<p>John/Nina: Discuss IRB JE's Ofc; Claudette Myers</p>	<p>OFF</p>	<p>John/Claud; Orientation Island</p>	<p>Leadership Review of EOP CR 18a; Raquel Johnson</p>	
3:00	<p>"Labor Unit" Staff Meeting HR Conf Rm; Claudette Myers</p>		<p>Review RFQ re: Executive</p>		
4:00	<p>John/David L: Projects</p> <p>John's Office; David Loiza-Funk</p>		<p>Discuss Morrison Co Larry's Office; Raquel</p> <p>John/Doug/Brenna: P JE's Ofc; Claudette Mye</p>		
5:00					<p>Heart Ball</p>
6:00	<p>Introduction to Business- BUS 101</p>				

Exhibit D - Page 19 of 30

# SPRING



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[CUSTODIAN INTERVIEW REPORT FOR DOUG SPRING,  
COMPLETED MARCH 26, 2014]

TO: Daniel Garrie, Esq.  
Electronic Discovery Special Master

FROM: Cayla Witty

*4-6-14 revised and produced per Special Master Order*

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Doug Spring, Director of Personnel Operations, contact via counsel.  
Education: BA in Organizational Communications, Masters in Public Administration. Has been with UMC 10 years, performing same work but with a variety of titles. Generally responsible for contract administration, union and employee negotiations, recruitment and selection.

Relevance to *Small* suit: would investigate complaints against supervisors, participated in meetings with Department of Labor (DOL) though not main contact, assist with policy revisions and training on new policies

Creates lots of email, correction and counseling notices to employees, drafting communications for administration to distribute re: HR policies, investigation reviews for possible rehires, presentations for training/orientation, policy documents and training materials, occasional HR newsletters.

#### Hard copy

Keeps grievance files in HR departmental filing, grievance files may include printed duplicates of emails. Has a personal file cabinet in his office - folders related to DOL timeclock investigation, also keeps some printed policy drafts in personal filing if revisions are relevant to other policies.

Does not keep calendar outside of Outlook. Not a note-taker in minutes, will ask an assist to perform that duty if necessary.

Inactive grievance files sent to long-term storage with Iron Mountain. Nothing has been set to Iron Mountain in over a year. These are only large scale filing he interacts with.

Other big project, i.e., SEIU negotiations maintains most documents electronically.

Org Charts are not generated by him, come through administration (CHRO or CEO office). Sometimes keeps hard copy drafts of new policies and procedures, but most maintained only electronic form.

#### ESI

Computer usage: daily, Mr. Spring has two separate desktop computers. One is placed in his office in the Trauma Building at UMC. One is placed in a second office in the Delta Point Building at UMC. Unsure of how long either desktop has been in use. Several years at least. Previously (prior to 2009 and relevant period) had a laptop for SEIU negotiation sessions. Everything from that period was sent by Doug via email and saved to shared HR drive after contract signed. Doug also occasionally logs in via "dummy terminals" (likely mobile workstations within UMC facility). Knows to only save to home folder (network saved).



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[CUSTODIAN INTERVIEW REPORT FOR DOUG SPRING,  
COMPLETED MARCH 26, 2014]

At some point in past (over 5 years ago), Doug had a flip phone (non text enabled) from UMC. Doug determined he did not need the phone for work and it was turned over to UMC PBX, wiped, and recycled / shred.

#### Applications

Mainly Office Suite, mostly Word and Powerpoint. Has opportunity to view other people's excel spreadsheets, but doesn't create spreadsheets himself. Doesn't use any healthcare-specific applications. Has access to Kronos/SAP, but usually has reports run for him.

Don't have other documents with revisions. In negotiations, there is generally a starting point and an ending point, and a whole lot of negotiated language is not preserved to prevent frustration in negotiation. For policies/procedures, save different versions/drafts with different file names.

Prefers electronic to hard copy storage. Always saves on HR shared drive. UMC does not allow personal mobile storage media. Doug does use Dropbox personally (mainly for pictures of grandkids).

Has separate password for computer log-in and Kronos/SAP application. Also a separate password for TS Web (remote access software). Policy not to share.

Email: No recent changes to policy. Understands that administration has larger storage capacity than regular employees. Signed security agreement upon hire. If policy changed, Doug would expect to be informed by email and would have to sign new notification. Policies also available on intranet.

Personally has only a couple subfolders within inbox. Printscreen attached. Archive files by quarter (monthly if very busy), saves to Q: (sharedrive). Has a separate archive for emails on *Small*. Nothing other than counsel's communications since last fall.

Knows that an HR group email exists, also patient service leader list, and manager/supervisor list, but doesn't use lists often.

Handheld Devices: Current personal smartphone is an Iphone 5s. Has had for several months. Will occasionally text with other individuals within HR department or Directors from UMC, but not a general contact number for UMC. Occasionally syncs to personal home apple computer. Does not track text messages. As UMC does not allow his phone to connect to servers, he can only access email through webmail within internet browser. Keeps all of his phone records electronically. Doesn't have any work-related voicemails.

Mr. Spring had an earlier iphone device prior to the iphone 5s. He was not clear as to its actual model. Because Mr. Spring's contact phone number is his cellphone, certain HR personnel and Director-level employees have his phone number and he occasionally uses his personal cell for UMC business. Mr. Spring did not mention a tablet.

Texting - limited to very short responses, does not initiate texts. None are relevant to *Small*. Doesn't believe UMC has a texting policy and does not back up his texts personally. Only work contacts are within HR and on the Director level.

Instant Messaging - just started, very seldom use. Doesn't initiate, really just response to requests. Example: "Yes, I'm going to the meeting." None relevant to *Small*. Doesn't personally store. Contacts are mainly administrative personnel.

Removable media: None. Desktop does not burn data discs, external media not allowed per UMC policy.

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COMPLETED MARCH 26, 2014]**

Remote Access: doesn't work from home. He can access through TS Web but it is a hassle (he would have to check the instruction manual) and he doesn't like to take work home. Knows that remote access is limited to needs of individual. Similarly, doesn't take documents home for filing.

#### Other

Involvement in case: Key due to assistance with litigation (document production etc.), Expect continuing requests, understands continuing obligation to retain and supplement documents

Non-identical documents: Discussed as part of grievance files, and some electronic filing by exec asst to CHRO, but mainly keeps only electronic versions

#### **Further Clarifications Requested by Special Master In Regard To Doug Spring Custodian Collection Interview Responses:**

Can Counsel please work with UMC to clarify what is meant by "dummy terminals" with nothing on "C"? Were these terminals being referenced, accessed in addition to the two computers by Mr. Spring? Can Counsel please speak with UMC IT department and ensure that someone from UMC IT Dept is available on April 4, 2014 to explain Mr. Spring's statement in further detail? Please also be prepared to explain how the script collected from these "terminals".

*UMC maintains several hundred "workstations on wheels" and other desktop computers available to staff not confined to a specific office. Any UMC employee with a profile log-in and password can log into these terminals. The accessibility at these workstations are limited depending on the specific employee's need for mobility in their work. For example, some employees would only have access to Outlook and the intranet on these stations. Others might have complete access to network drives or other connected servers, etc. Mr. Spring did not specifically identify any computer workstations other than his Trauma Building office computer and his Delta Point office computer. He considers his Delta Point office computer a "dummy terminal" because he does not use it as regularly and does not save to the Delta Point local drive.*

Can Counsel please work with Mr. Spring to clarify the statement "UMC does not allow personal mobile storage media"? Does UMC allow mobile storage that is non-personal?

*Please see UMC Information Security Agreement. If mobile storage (such as a flashdrive) is required for work purposes, UMC IT Security will provide an Iron Key mobile storage device with additional password and encryption support to maintain the security of any data that is stored to the Iron Key device.*

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Inbox - Microsoft Outlook

File Edit View Go Tools Actions Help

New Reply Reply to All Forward Send/Receive Search address books

PDF Converter 4.1

**Mail**

Favorite Folders

- Inbox (151)
- Unread Mail
- Sent Items

Mail Folders

- All Mail Items
- Mailbox - Doug Spring
- Deleted Items (10)
- Drafts (5)
- Inbox (45)
- Links
- Silent Whistle
- Junk E-mail (1)
- Outbox
- RSS Feeds
- Microsoft at Home (22)
- Microsoft at Work (34)
- Sent Items
- Search Folders
- Call Logs
- Categorized Mail
- For Follow Up
- Large Mail
- Missed Conversations
- Unread Mail
- Archive - Doug Spring
- Deleted Items
- Inbox
- Links
- Silent Whistle
- RSS Feeds
- Microsoft at Home (197)
- Microsoft at Work (214)
- Sent Items

**Inbox**

Search Inbox

From	Subject	Received	Size	Start	Cat...
Maria Hernandez	RE: Seniority List	Fri 4/4/2014 2:48 PM	16 KB	None	
John Espinoza	Food Services positions	Fri 4/4/2014 2:47 PM	11 KB	None	
Brenna Leising	FW: Meeting w/ PIZZA	Fri 4/4/2014 2:47 PM	24 KB	Wed 4/3/2014...	
Brenna Leising	RE: 2015 Budget Review	Fri 4/4/2014 2:45 PM	37 KB	None	
Latoria (Toni) Burns	Nepotism Report 040414.xls	Fri 4/4/2014 2:41 PM	38 KB	None	
Claudette Myers	RE: Meeting w/ PIZZA	Fri 4/4/2014 2:37 PM	16 KB	None	
Prabha Iyengar-Cox	Automatic reply: 2015 Budget Review	Fri 4/4/2014 2:34 PM	10 KB	None	
James Mumford	ernest todd and apprenticeship pay	Fri 4/4/2014 2:19 PM	10 KB	None	
Claudette Myers	RE: you need to fix your signature block on your "re...	Fri 4/4/2014 2:15 PM	17 KB	None	
Brenna Leising	RE: Georgette LaChapelle-Brewer	Fri 4/4/2014 2:13 PM	30 KB	None	
Regina Pfaff	RE: KRONOS and SAP	Fri 4/4/2014 2:09 PM	18 KB	None	
Kathryn Hughes	RE: KRONOS and SAP	Fri 4/4/2014 2:09 PM	17 KB	None	
Kathleen Reese	http://www.marchforbabies.org/Reesespiece40	Fri 4/4/2014 2:07 PM	47 KB	None	
Raquel Johnson	Director's and Manager's Quarterly Meeting	Fri 4/4/2014 2:07 PM	84 KB	Thu 4/24/2014...	
Suzanne Dessaints	RE: stand by	Fri 4/4/2014 2:03 PM	14 KB	None	
Brenna Leising	RE: RE:	Fri 4/4/2014 2:00 PM	24 KB	None	
Kerry McCall	FW: RFQ - Compensation Market Survey without ne...	Fri 4/4/2014 1:56 PM	192 ...	None	
Danita Cohen	FW: Approved Requisitions	Fri 4/4/2014 1:56 PM	89 KB	None	
Brenna Leising	RE: Georgette LaChapelle-Brewer	Fri 4/4/2014 1:51 PM	27 KB	None	
Claudette Myers	NMA Survey: Need info	Fri 4/4/2014 1:50 PM	167 ...	None	
Claudette Myers	Invitation for Comp Tickets for "Panda" (Tonight Only)	Fri 4/4/2014 1:26 PM	233 ...	None	
Claudette Myers	RE: I need:	Fri 4/4/2014 1:26 PM	79 KB	None	
Brenna Leising	RE: updated report - Hsg Positions w/min requirema...	Fri 4/4/2014 1:23 PM	15 KB	None	
Brenna Leising	RE: Approved Requisitions of Classification Watch List	Fri 4/4/2014 1:22 PM	18 KB	None	
Claudette Myers	Iron Mountain Boxes: Physician Grievances- which o...	Fri 4/4/2014 12:54 PM	52 KB	None	
BenefitsLink.com	BULLETIN: BenefitsLink Retirement Plans Newsletter	Fri 4/4/2014 12:40 PM	35 KB	None	
Gregg Fusto		Fri 4/4/2014 12:27 PM	11 KB	None	
Maria Hernandez	Seniority List	Fri 4/4/2014 12:25 PM	17 KB	None	
Virginia Carr	moving forward	Fri 4/4/2014 11:49 AM	19 KB	None	
Brenna Leising	RE: 2015 Budget Review	Fri 4/4/2014 11:22 AM	31 KB	None	
John Espinoza	Return to Orientation Island Comments	Fri 4/4/2014 11:17 AM	3 MB	None	
Daisy Markham	RE: Graphs for Governing Board	Fri 4/4/2014 11:13 AM	124 ...	None	
Stephanie Merrill	FW: Dept. of Pediatrics Employees	Fri 4/4/2014 10:51 AM	86 KB	None	
Shirley Phillips	RE: Managed Care Sr. Analyst Position	Fri 4/4/2014 10:39 AM	16 KB	None	
Rose Coker	Managed Care Sr. Analyst Position	Fri 4/4/2014 10:38 AM	16 KB	None	
Jade Dee	updated report - Hsg Positions w/min requirements	Fri 4/4/2014 10:37 AM	40 KB	None	
Reports	UMCSNV-14-04-0003 WPA Initial Report (Priority C)	Fri 4/4/2014 10:33 AM	17 KB	None	
Brenna Leising	RE: 2015 Budget Review	Fri 4/4/2014 10:33 AM	27 KB	None	

**To-Do Bar**

April 2014

S	M	T	W	T	F	S
31	1	2	3	4	5	
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

Labor Unit Staff Meeting  
Mon 9:00 AM - 10:00 AM  
HR Conf Rm; Claudette Myers

John Absent  
Mon 9:00 AM - 9:50 AM

Lunch  
Mon 11:30 AM - 1:00 PM

Arranged By: Due Date

Type a new task

**Today**

Ernie and Connie

Eval: Qual Tent...

**Next Month**

Eval: Jadee ...

Eval: Leah C...

**Later**

Eval: Daisy (6...

Eval: Regina ...

Jun/July Ne...

Aug/Sep He...

Eval: Maria (...)

Eval: Lateefa...

Eval: Toni B...

Eval: Brenna...

Eval: James ...

Eval: Shirley ...

Oct/Nov Ne...

Eval: Noel Fa...

Feb/Mar Ne...

Eval: Ann R...

# MYERS

Confidential

[CUSTODIAN INTERVIEW REPORT FOR CLAUDETTE MYERS, COMPLETED APRIL 1, 2014]

TO: Daniel Garrie, Esq.  
Electronic Discovery Special Master

FROM: Cayla Witty

*4-6-14 revised and produced per Special Master Order*

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Claudette Myers, Administration Assistant to John Espinoza (CHRO), also acts as clerical support to Doug Spring and HR department as well as office manager to HR

Education: none post-high school. Work experience with UMC- 28 years. Hired as temporary file clerk in patient accounting, permanent full-time. Collection clerk in legal department. Secretary for controller, then current. Job responsibilities: administrative support CHRO, ensure up-to-date on education and annual requirements, equipment running and supplied, maintain budget, processing payments, calendaring for John and Doug (others as well depending on need), ensure coverage/staffing

Specific duties relating to CHRO: monitor communications, task management  
Relevance to *Small* suit- assistance to CHRO, timekeeper for HR (would receive cancellation of lunch requests by email or verbally and then document in Kronos system)

Creates spreadsheets, letters, correspondence, powerpoint presentations, email blasts, forms (created within word)

#### Hard copies

Only keep hard copies as required. If an email was printed, it was shred after use.

Required hard copies: Attestation forms (timeclock change requests) - original is kept for three years per policy. Kept in Binders by year behind her desk, started in October 2012. As HR timekeeper, Claudette keeps just HR department.

Also have hard copy HR policies on demand

If minutes are required for a meeting (with county commissioners or other organization), Claudette will type up notes and handwritten reference is shredded.

Claudette maintains the HR Org Chart, and is the only person who can edit it. Can be printed, but is generally available on common drive for reference in pdf form.

Big projects end up at Iron Mountain, but those are not regular filings. HR sends departmental files such as recruitment files (although may not now as applications are all online), personnel files (also now scanned/online), microfiche and film for old records, and labor relations (grievances) when closed. Maria Hernandez monitors the long-term storage for HR.

#### ESI

Computer usage - Daily. Just her desktop, previously used to cover front desk of HR and would log-in to that computer. Also will log-in to administration office laptop for Skype interviews (but no other use of laptop).



Confidential

## [CUSTODIAN INTERVIEW REPORT FOR CLAUDETTE MYERS, COMPLETED APRIL 1, 2014]

No phone, tablet, or laptop from UMC. Personal phone: Iphone4s, has had since it first came out. Prior to that had earlier Iphone (unsure of specific model). Syncs to her home computer the following: apps, calendar, music, contact information. Still have prior device. Uses ATT cloud for iphone/ipad. No dropbox/vault/etc.

Applications: MS Office: Word, Excel, Powerpoint, Visio (flowchart program)  
Has access to AS/400 - older patient tracking information, used by HR/payroll, purely historical information (check timekeeping/pay rate that is now in SAP). Doesn't use new electronic health records program. Uses SAP to pull personnel information (titles, rate of pay, benefits) and to create check requests and purchase orders  
As timekeeper, uses Kronos for time change entries (stores timekeeping/hours worked, vacation, sick time, tardies, educational time).  
If saved documents need history maintained, will save with dated file (e.g., v.3 April 2014). If involved in review of policies, will maintain track changes in certain policies. Prefers to maintain pure electronic files. Saves a lot on home drive, common drive for John and Doug (secured access) (e.g., office of diversity issues, labor communications); sometimes saves forms on full HR dept drive. Posts copies of a lot of forms to intranet. Does not share log-in with anyone. Has access to CHRO, but not shared log-ins.

Mobile storage: no flashdrive or external. Only thing Claudette burns to disc are hearing recordings for union, labor relations, and hearing officer. Doesn't burn anything else.

Email: Organizes folders by subject. Print screen attached. Archives by year. Knows email use policy on intranet. Doesn't remember any specific emails relating to Small lawsuit allegations other than discovery production requests from counsel. Can send emails to distribution list for UMC-POST. Understands that individuals that can send to that list are determined by the CEO and his executive assistant. Then IT provides permission.

Texts: yes, on personal phone. Some are work-related, such as telling CHRO about scheduling conflicts, etc. None relevant to *Small*. Always deletes texts immediately as a personal habit. The work contacts that might be included are: John Espinoza, Doug Spring, Jackie Panzeri, various HR staff

Instant Messaging: doesn't personally archive. Knows of option to keep message history. Treats like texting: saves nothing. If important information needed, sends email. Knows there is an option within SAP to send messages, but doesn't know if anyone uses it. She has tried to send messages, but not returned.

Mobile Storage: none used except burning discs for hearings.

Previously had Remote Access, hasn't used in years, unsure if still available. Doesn't work from home.

### Other

Involvement in case: Important Custodian, Continuing and Historical

Regarding interactions with John Espinoza's ESI:

The documents from the CEO search that were sent to Iron Mountain were items that could not be scanned. If it was scanned, it was saved to common drive electronically

Confidential

[CUSTODIAN INTERVIEW REPORT FOR CLAUDETTE MYERS, COMPLETED APRIL 1, 2014]

and it remains there. Claudette saved it to a folder in John's common drive. Because of certain restrictions on documents, certain hard copies had to be stored with Iron Mountain, but no discs were sent to Iron Mountain. Iron Mountain has been storage maintenance for a long time. Unsure exactly of time frame, but definitely before 2009.

When phones needed upgrading or servicing, telecommunications specialists Trina Burrage-Simon or Sandra Sandoval serviced John's phone. Claudette arranged for the service with these supervisors in communications/PBX department.

For minutes taking in meetings, this was not Claudette's responsibility, except for labor negotiations. That Claudette does take down.

Depending on need for formally recorded minutes, Doug Spring might ask other HR staff to assist such as Maria Hernandez, James Mumford, or Leah Conedy. Most times, notes were just keeping track of conversation.

Claudette also assists: Prahba Iyengar-Cox, personnel services manager, the new Recruitment and retention manager, and Doug Spring, Director of Personnel Operations.

Claudette did not get involved with the DOL investigation except to assist John Espinoza and Doug Spring in scheduling telephone calls and in gathering information from other people (requesting reports from payroll, etc.). Claudette does not remember specific documents, but by practice would have scanned everything possible into a folder on common drive. Doug would have hard copy duplicates if any were kept.

shared  
Conference Room  
Scheduling





# Exhibit E



P.O. Box 2270  
311 E. Liberty Street  
Reno, Nevada 89505  
(Tel) 775-323-1321  
(Fax) 775-323-4082

August 6, 2012

VIA FIRST CLASS CERTIFIED MAIL

Brian Brannman  
Chief Executive Officer  
UMC Southern Nevada  
1800 W. Charleston Blvd  
Las Vegas, NV 89102

RE: *Small, et al. v. University Medical Center of Southern Nevada*: Preservation  
of Evidence, Including Electronic Discovery and Other Issues, Case No.  
3:12-cv-00395

Dear Mr. Brannman:

I am counsel for Plaintiffs in the above-captioned action. In accordance with the 2004 decision, *Zubulake v. UBS Warburg, LLC*, 02 civ. 1243, 2004 US Dist. LEXIS 13574 (S.D.N.Y. July 20, 2004), Plaintiffs put you on immediate notice of your duty to preserve all electronic data that is relevant to this litigation matter.<sup>1</sup> As you are aware, once litigation is reasonably foreseeable, a party must take affirmative measures to preserve potential evidence that might otherwise be destroyed in the course of normal business. Specifically, University Medical Center of Southern Nevada (hereinafter "UMC") is required to preserve all electronic data including, but not limited to, data stored on company computers, company servers, pagers, timekeeping programs, scheduling programs, payroll programs, home computers and removable media (floppy disk, CD-R's, DVR's

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<sup>1</sup> The affirmative and proactive duty to safeguard documentary and tangible evidence, including electronic evidence, is long established. See, e.g. *Wm. T. Thomson Co. v. General Nutrition Corp.*, 593 F. Supp. 1443 (C.D. Cal 1985) (imposition of monetary sanctions and striking of defendant's pleadings for abuse of discovery and destruction of evidence, including electronic data).

etc.). The electronic data that must be preserved includes all timekeeping records, scheduling records, payroll data and relevant information contained in e-mails, video, date books, word-processing files, spreadsheets, databases, HTML files, etc.

The specified electronic data is vitally important to this litigation and can be easily manipulated or destroyed. The rules prohibiting the destruction of traditional paper evidence apply equally to the destruction of electronic evidence. "Reasonable preservation" requires but is not limited to, the discontinuance of all electronic data destruction policies.

Please take notice that UMC<sup>2</sup> and all persons in active concert or participation with UMC are restrained and enjoined from altering, interlining, destroying, permitting the destruction of, or in any other fashion changing any "document" in the actual or constructive case, custody or control of such person, wherever such document is physically located, or irrevocably changing the form or sequence of the files in which the document is located. Such persons are also enjoined from changing the location of any such documents except to facilitate compilation, review or production (as by filing in a document depository).

"Document" shall mean and include any electronic data such as e-mail database(s), e-mail messages and attachments sent or received, reports or records of any kind generated from Defendant's email and payroll systems, timekeeping records, pagers, computer storage tapes, computer storage cards or disks, dvr and other recordings from client cameras, writings, drawings, film, videotapes, charts, photographs, phonograph records, tape records, mechanical or electronic sound recording or transcript thereof, retrievable data (whether carded, taped coded, electrostatically or electromagnetically recorded, or otherwise), or other data compilation from which information can be obtained, including (but not limited to) employee manuals or handbooks, notices, memoranda, diaries, minutes, purchase records, purchase invoices, market data, correspondence, books, journals, ledgers, statements, reports, invoices, bills, vouchers, worksheets, jottings, notes, letters, abstracts, audits, charts, checks, diagrams, drafts, recordings, instructions, lists. Logs, orders, recitals, telegram messages, telephone bills and logs, resumes, summaries, compilations, computations, and other formal and informal writings or tangible preservations of information.

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<sup>2</sup> For purposes of this letter, "University Medical Center of Southern Nevada" refers to University Medical Center of Southern Nevada, as well as all known and unknown entities as identified and contemplated in Plaintiffs' Complaint.

This preservation notice pertains to documents containing information that may be relevant to, or may lead to the discovery of information relevant to this litigation or the claims or defenses asserted herein, including but not limited to: all documents regarding Defendant's employment of individuals as Respiratory Therapists; all records regarding or generated by UMC's timekeeping system; pay records for Respiratory Therapists; policies and procedures regarding overtime for all of Defendants' employees; any and all data and pager information relating to the pagers required to be utilized by Respiratory Therapists; and all documents regarding duties and responsibilities of Respiratory Therapists. This preservation notice pertains to all documents as defined herein, which have been written or generated from July, 2008 through the present.

Accordingly, you should have already issued instructions to directors, officers, employees, IT personnel, attorneys, and anyone else acting on behalf of or within the control of your client to suspend destruction of documents, things, and other electronic data while this matter is pending, or until such items have been determined not to contain discoverable evidence.

In the event that you have not issued any instructions in this regard, at a minimum, and to help avoid any subsequent dispute between the parties, please issue immediate written instructions to employees that direct them to:

- Refrain from the practice of "recycling" backup tapes and storage media;
- Refrain from any activity that would alter or damage data on any computer systems including deleting, defragmenting, or compressing data, or disposing of any electronic media including backup tapes, hard drives, diskettes, pagers and CD-ROMS;
- Refrain from saving new data to media that already contains electronic data (thus overwriting existing electronic data);
- Refrain from installing new software or files on any media that already contains electronic data subject to discovery.

Please note that the above list is not exhaustive and there are additional measures that must be immediately implemented to protect discoverable electronic

evidence depending on your client's computer systems and network configuration. You and your client should thus consult immediately with your client's senior systems analysts and/or architects to determine what measures must be implemented to comply with the your obligation to preserve all discoverable electronic data.

The failure to preserve documents, including electronic data and metadata, could result in extreme penalties such as monetary sanctions, adverse jury instructions, and even a directed verdict. Further, the destruction of evidence can give rise to an emerging tort and separate cause of action for evidence spoliation. We strongly recommend that you seek experienced counsel regarding proper preservation methods of all electronic data.

Very truly yours,

  
David C. O'Mara, Esq.

# Exhibit F

**Claudette Myers**

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**From:** Cindy Dwyer on behalf of Brian Brannman  
**Sent:** Monday, April 15, 2013 8:14 AM  
**To:** Patient Service Leaders  
**Subject:** Department of Labor Requests for Information  
**Categories:** DOL

As discussed in Patient Service Leader meeting, UMC continues to respond to requests for information from the Department of Labor and attorneys representing employees who have filed a complaint regarding meal and rest break claims and overtime claims. As we work through these complaints I want to remind you of our obligation to preserve documents that may relate to this issue. Please make sure that you do not destroy any emails, staffing schedules, correspondence, meeting minutes or any other related documents. If you have a question regarding how relative a document might be, please contact Human Resources.

*Brian Brannman, CEO*



# Exhibit G

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA

DANIEL SMALL, CAROLYN SMALL,  
WILLIAM CURTIN, DAVID COHEN,  
LANETTE LAWRENCE, AND LOUISE  
COLLARD, Individually, and  
on Behalf of All Other  
Persons Similarly Situated,

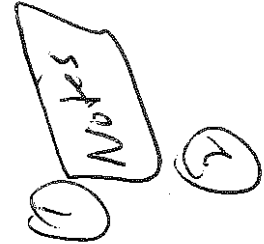
Plaintiffs,

vs.

UNIVERSITY MEDICAL CENTER OF  
SOUTHERN NEVADA,

Defendant.

CASE NO.  
13-cv-00298 MMD-GWF



VIDEOTAPED DEPOSITION OF JOHN ESPINOZA

Taken at the law offices of Morris Polich & Purdy, LLP

3883 Howard Hughes Parkway, Suite 560

Las Vegas, Nevada

On Monday, April 8, 2013

At 8:58 a.m.



REPORTED BY: Blanca I. Cano, CCR No. 861, RPR

1 Q. Was she alone?

2 A. She was alone. I had with me the manager of  
3 the payroll department.

4 Q. What was discussed at the last meeting held  
5 two -- two weeks ago?

6 A. We had provided documentation on how we would  
7 calculate any potential back pay based on her initial  
8 assumptions.

9 Q. You provided a document to Ms. Hernandez?

10 A. Yes.

11 Q. Something in writing?

12 A. Yes.

13 Q. Has that been produced in this case?

14 A. I don't know.

15 Q. Do you still have a copy of it?

16 A. Well, what it is is it's -- it's pieces and  
17 parts of looking at individuals' payroll stubs, the  
18 calculations that were done based on a prescribed missed  
19 lunch per her analysis, and the actual calculations that  
20 came from that. So, yeah, I think the -- I think there  
21 was a summary report that is available. All the detail  
22 I think may have been handed over to Ms. Hernandez.

23 Q. Is it your testimony that you haven't kept  
24 copies of any of the detail backing up that summary  
25 report?

1           A.    No.  I think the -- the detail can -- if -- if  
2 payroll doesn't already have a copy of it, I know that  
3 they can probably reproduce it.  I just don't know  
4 because I don't keep any of those documents.  Payroll  
5 kept all those documents.

6           Q.    Earlier we looked at two preservation letters,  
7 correct?

8           A.    Yes.

9           Q.    Okay.  You understand that those preservation  
10 letters apply to you?

11          A.    Yes.  Like I said, I don't think the  
12 documentation doesn't exist, I just don't have it.

13          Q.    Okay.  Well, where is it?

14          A.    With the payroll department.

15          Q.    So the payroll department has it?

16          A.    Yes.

17               MR. TOSTRUD:  We're going to ask that that --  
18 those documents, Jeremy, be main -- be maintained,  
19 preserved, and produced immediately.

20               MR. THOMPSON:  (Counsel nods head.)

21 BY MR. TOSTRUD:

22          Q.    What other documents were used in the course of  
23 that 20-minute meeting with Ms. Hernandez two weeks ago?

24          A.    None.

25          Q.    How were these meetings with Ms. Hernandez

# Exhibit H

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA**

DANIEL SMALL, CAROLYN SMALL,  
WILLIAM CURTIN, DAVID COHEN,  
LANETTE LAWRENCE, and LOUISE  
COLLARD, Individually, and on Behalf of  
All Other Persons Similarly Situated,

Case No.: 2:13-cv-00298-APG-PAL

Plaintiffs,

vs.

UNIVERSITY MEDICAL CENTER OF  
SOUTHERN NEVADA,

Defendant.

**DECLARATION OF DANIEL SMALL**

I, DANIEL SMALL, hereby declare under penalty of perjury pursuant to 28 U.S.C. §1746 that the following is true and correct:

1. I am over the age of 21, competent to testify and if called to testify would do so consistent with all matters set forth herein.
2. I currently work as an hourly employee for the University Medical Center of Southern Nevada ("University Medical Center"). I have been employed with University Medical Center from October 31, 2005 to the present.
3. On or around March 21, 2014, I received an email to my University Medical Center Outlook email account marked "UMC Post" via the University Medical Center intranet. The email contained a notice about a newly revised University Medical Center Policy, "I-25," regarding record retention and disposal.
4. I went to the "Policies and Procedures" online manual on the University Medical Center intranet and typed in "I-25" to view the newly revised policy.
5. A document then appeared with the following subject line: "Record Retention and Disposal." Attached hereto as Exhibit A is a true and correct copy of the document.

Declaration of Daniel Small

- 1 6. On or around March 21, 2014, I received an email to my University Medical  
2 Center Outlook email account from "Lonnie Richardson" with the subject line  
3 reading as follows: "System Alert: Documents and Files Stored on Local "C"  
4 drive." Attached hereto as Exhibit B is a true and correct copy of the document.  
5  
6 7. I understand that by signing this Declaration I am swearing under oath to the best  
7 of my knowledge and belief that everything stated in this Declaration is true and  
8 that I am acting of my own free will and am not under any undue pressure,  
9 influence or duress.  
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Dated: April 9, 2014

  
Signature

Daniel D. Small  
Printed Name

Declaration of Daniel Small

# EXHIBIT A



**UNIVERSITY MEDICAL CENTER OF SOUTHERN NEVADA  
ADMINISTRATIVE POLICY AND PROCEDURE MANUAL**

<b>SUBJECT: Record Retention and Disposal</b>		<b>ADMINISTRATIVE APPROVAL:</b>
<b>EFFECTIVE: 02/01/08</b>	<b>REVISED: 1/14</b>	
<b>POLICY #: 1-25</b>		
<b>AFFECTS: All Personnel</b>		

**PURPOSE:**

To ensure the proper creation, retention, preservation, and disposal of UMC records.

**POLICY:**

UMC will use effective and efficient measures to ensure the maintenance of complete, accurate, and high quality records. All records will be retained in accordance with applicable laws and regulations.

All UMC records will be retained and preserved in keeping with appropriate regulatory statutes and/or recommendations.

When the limitation of record retention has been met, records will be destroyed in such a manner that patient confidentiality is maintained. The unauthorized destruction of any records or removal of records from UMC is strictly prohibited.

Records containing confidential and/or proprietary information will be securely maintained, controlled, and protected to prevent unauthorized access and disclosure. Anyone with knowledge of the unauthorized removal, destruction or alteration of UMC records should report the same to the Compliance Officer at (702) 383-6211 or the Compliance Hotline at (702) 383-2208. The Compliance Hotline is anonymous and available 24 hours a day, 7-days a week.

All records generated and/or received by UMC are considered UMC property. No employee, medical staff member, contractor, or vendor has a personal or property right to such records.

Records will be modified, amended, altered only in accordance with UMC policies and procedures.

Each department that creates and maintains documents required by state and/or federal laws and regulations, that are not on the Retention Schedule will keep and annually update a department specific retention schedule. Each department specific retention policy will be reviewed annually for changes and revisions.

The retention period for a record applies to the record regardless of the medium in which it is maintained. When scanning staff minutes for electronic retention you must include the following: meeting agenda, sign-in sheet and a copy of the signed minutes.

**Record Disposal:**

Confidentiality will be maintained when disposing of hospital sensitive and patient information. Each department will have available either a shredder or confidential disposal bin for this purpose.

Any deviation from the retention schedule must have written administrative approval.

**Legal Holds:**

This schedule does not authorize destruction of records that could be deemed relevant to current or pending litigation. All records deemed relevant are to be placed on a Legal Hold and destruction is to be suspended until after the matter has been wholly or partially resolved and legal counsel releases the Hold and issues instruction to return to routine records destruction.

**Definitions:**

1. **Health Care Records.** Retrievable information recorded, regardless of medium. Health Care Records include reports, notes, orders, photographs, x-rays or other recorded data or information whether maintained in written, electronic or other form which is received or produced by a provider of health care, or any person employed by him, and contains information relating to the medical history, examination, diagnosis or treatment of the patient. These records are subject to a retention schedule and can only be discarded on the expiration of their respective retention period.
2. **Company Business Records.** Information generated or received relating to the transaction of UMC business. These records include, but are not limited to, letterhead correspondence, UMC policies and procedures, official meeting minutes, personnel records, staff schedules and assignment sheets, patient logs/registries, benefit programs, accounts payable and receivable, purchase requisitions, documents evidencing reimbursement or receipt, finance and audit reports, contracts, and insurance documents.

Email messages and documents transmitted via email can be considered Company Business Records and are subject to this policy. The retention period for emails is directly related to its message content. To determine the applicable retention period, treat the email like a paper document.

Company Business Records are subject to a retention schedule and can only be discarded on the expiration of their respective retention period.

3. **Non-Records.** This includes duplicate copies of Company Business Records, blank forms, documentation evidencing the informal communication of information such as sticky notes or telephone message pads, and forms and documents used and

<b>Subject: Record Retention and Disposal</b>
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<b>Page 3 of 4</b>
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maintained with short-term business/administrative value. Non-Records may be discarded once the business/administrative use ends.

**Retention Schedules:**

1. All records will be maintained and retained in accordance with applicable federal and state laws and regulations. The minimum retention schedule is attached to this policy as Appendix A.
2. Proposed changes or additions to current Health Care Records and Non-Company Business Records will be submitted to the Administration for review and approval before implementation.
3. Administration will review and approve any changes to the Retention Schedule.
4. Health Care Records and Company Business Records will be reviewed periodically to determine continued propriety of continued use and storage.

**References:**

Nevada Administrative Code 239  
NRS 629.021 Health care records defined  
NRS 629.021 Health care records  
NAC239.151 Categories of records  
CFR 405.2139- CMS guidelines

**Joint Commission Standards:**

Management of Information: IM 6.10

Subject: Record Retention and Disposal

Page 4 of 4

**Appendix A**  
**RECORD RETENTION**

DESCRIPTION	RETENTION
Original Schedules will be maintained in the Nursing Administration Office	3 years Media: The original to be scanned electronically and saved on the "Q" drive under Nursing Administration.
Staff assignment sheets will be maintained by the Clinical Managers	3 years
Daily staffing reports will be kept by the Clinical Manager	1 year (minimum)
Acuity Reports	1 month (minimum) Available online GRASP Data Base
Refrigerator, Freezer, Warmer, and Point of Care temperature logs will be maintained per NRS 629.051 and JCAHO	5 years
Logs for emergency cart checks will be maintained from JCAHO to JCAHO by the Clinical Managers	5 years
Patient Log/Registry will be maintained by the specific department (Emergency departments, Burn unit, L&D...	3 years (minimum)
Original Department Staff Meeting Minutes in the Nursing Administration office.	1 year Media: The original to be scanned electronically and saved on the "Q" drive under Nursing Administration.
Original Department Shared Governance committee minutes will be maintained by the Clinical Manager	
Original Interdisciplinary & Nursing Committee Meetings will be maintained in the Nursing Office	3 years
Financial Reports will be maintained by the Managers	The previous fiscal year

# **EXHIBIT B**

**Daniel Small**

---

**From:** Lonnie Richardson  
**Sent:** Friday, March 21, 2014 11:57 AM  
**To:** UMCPost  
**Subject:** System Alert: Documents and Files Stored on Local "C" drive

**Importance:** High

**Why am I contacting you?**

- Many folks within UMC are storing files and documents on the local "C" drive and on the computer "Desktop".
- As we progress with the Microsoft Windows Operating System upgrade to version 7, we need to remind everyone of the UMC policy on the location of files and documents.

**What is the policy?**

- Documents and files are NOT to be stored on the local "C" drive or on the computer's "desktop".
- The reason is two-fold. 1) These two locations are NOT backed up at all. 2) Storing large amounts of data on the desktop seriously hampers the performance of the machine.

**Who does this affect you?**

- You must move anything you need to keep, that is stored on the "C" drive or "Desktop", to your "My Documents" location or a shared drive folder.
- Anything on the "C" drive or Desktop will NOT be saved as your workstation is upgraded to Windows 7. We cannot restore these objects after the upgrade, as they are NOT backed up.

**What will happen if you do not move the files to a shared folder or "My Documents" location?**

- The files will be lost.
- Information Technologies will NOT be able to restore these files.

**What is your next step?**

- Move the files that you need to keep off the "C" drive and your Desktop, now.
- Moving the files to the correct locations will ensure they are backed up, and are able to be restored.
- They will be available to you after the Windows 7 upgrade.
- You will be in compliance with UMC computer usage policies.

---

Lonnie Richardson  
Director  
Information Technology

University Medical Center of Southern Nevada  
1800 W Charleston Blvd  
Las Vegas, NV 89102

O: (702) 383-7397

Compassion • Accountability • Integrity • Respect

# Exhibit I

## PST Repair and Production tests for UMC

Updated 04.02.14

## ScanPST Results

ScanPST (15.0.4561.1000) run on all PST and OST files

Custodian	PSTs	OSTs
Brian Brannman	3	3
Doug Spring	21	7
Jackie Panzeri	13	2
James Mumford	4	14
John Espinoza	2	2

Jackie Panzeri had 2 ANSI Format PST's that were over the 2GB file limit and could not be repaired without trimming.

PST2GB.exe (1.5.0.2) was used to trim the ANSI PST files until ScanPST could successfully run.

PST File	MB Trimmed to allow repair
Jackie Panzeri\JackiePanzeri_HomeDrive\Jackie.Panzeri.pst	36 MB
Jackie Panzeri\JackiePanzeri_HomeDrive\Archived e-mail\Archive1.pst	512 MB

All log files have been provided in native format.

## Email Test Results

ScanPST (15.0.4561.1000) run on all PST and OST files

EML and MSG files Exported from P2 Commander (2.2.4688.24628)

MSG files exported from EnCase 6 (6.19.7.2) and EnCase 7 (7.07.00.138)

Exported files reviewed in Outlook 2013 (15.0.4569.1503)

All files processed and exported in Ipro eCapture (6.2.2)

Export reviewed

Bates	Software	Format	Native Body View	Native Attachment View	eCapture Text Extract	Ipro eCapture Attachments
1	P2 Commander	EML	Blank	SMime.txt	Raw Mime	
1	P2 Commander	MSG	Can't Open	Can't Open	Appears Correct	
1	EnCase 6	MSG	Appears Correct		Appears Correct	
1	EnCase 7	MSG	Appears Correct		Appears Correct	
4	P2 Commander	EML	Body Text Cut Off		Rich Text Content	



4	P2 Commander	MSG	Appears Correct		Appears Correct	
4	EnCase 6	MSG	Appears Correct		Appears Correct	
4	EnCase 7	MSG	Appears Correct		Appears Correct	
2857	P2 Commander	EML	Raw Mime Encoding	No Attachments	Raw Mime Encoding	No Attachments
2857	P2 Commander	MSG	Appears Correct	Attachments	Appears Correct	Attachments
2857	EnCase 6	MSG	Appears Correct	Attachments	Appears Correct	Attachments
2857	EnCase 7	MSG	Appears Correct	Attachments	Appears Correct	Attachments
3715	P2 Commander	EML	'Chinese Characters'		No Body Text	
3715	P2 Commander	MSG	'Chinese Characters'		HTML Code	
3715	EnCase 6	MSG	Appears Correct		Appears Correct	
3715	EnCase 7	MSG	Appears Correct		Appears Correct	
16221	P2 Commander	EML	Raw Mime Encoding	No Attachments	Raw Mime Encoding	No Attachments
16221	P2 Commander	MSG	Appears Correct	.MTH Files	Appears Correct	.MHT Files
16221	EnCase 6	MSG	Appears Correct	.RTF Files	Appears Correct	.RTF Files
16221	EnCase 7	MSG	Appears Correct	.RTF Files	Appears Correct	.RTF Files
29140	P2 Commander	EML	Raw Mime Encoding	No Attachments	Raw Mime Encoding	No Attachments
29140	P2 Commander	MSG	'Chinese Characters'	Attachments	HTML Encoding	Attachments
29140	EnCase 6	MSG	Empty	Attachments	Empty	Attachments
29140	EnCase 7	MSG	Empty	Attachments	Empty	Attachments
38219	P2 Commander	EML	Empty	Attachments	Raw Mime Encoding	Attachments
38219	P2 Commander	MSG	Empty	Attachments	Empty	Attachments
38219	EnCase 6	MSG	Empty	Attachments	Strange Characters	Attachments
38219	EnCase 7	MSG	Empty	Attachments	Empty	Attachments

## Summary of Email Test Results

Despite the manufacturers claims of compatibility the results of these tests show that it is likely that most errors were caused by P2 Commander not processing the source files accurately.

lpro eCapture also failed to process attachments correctly as confirmed by their technical support, due to their use of the 3<sup>rd</sup> party Anpop plugin.

EnCase 6 did generate one email with some incorrect body text, however most files produced with EnCase 6 or 7 did not exhibit any issues during pre-processing, or produce unexpected results once processed in lpro eCapture.

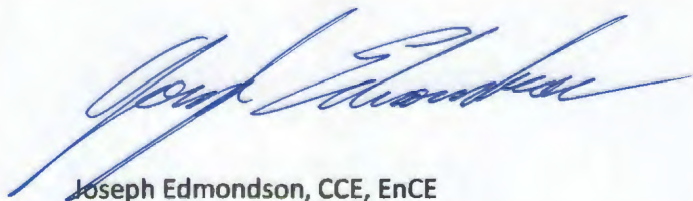
## Test of lpro eCapture 'Body' Metadata field

Since lpro eCapture is not capable of removing the Mime, RTF or HTML Formatting from the exported txt files automatically their technical support suggested that the meta-data field called 'Body' could be exported in the load-file.

The 'Body' field was exported for the test emails and still contains the Mime, RTF and HTML Formatting.

## Attachments

- a. All ScanPST Log Files.zip
- b. Test Email eCapture Export.zip



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## Amendment to PST Repair and Production tests for UMC

Updated 04.11.14

This document is to correct a misprint in the previously produced report entitled “PST Repair and Production tests for UMC” dated 04.02.14 and entered into evidence as Exhibit #1.

In the table provided for ScanPST Results for custodian John Espinoza the count of OST Files was incorrectly entered as 2, the correct number of OST files was 0.

The corrected table is provided below.

### ScanPST Results

ScanPST (15.0.4561.1000) run on all PST and OST files

Custodian	PSTs	OSTs
Brian Brannman	3	3
Doug Spring	21	7
Jackie Panzeri	13	2
James Mumford	4	14
John Espinoza	2	0

### Screenshots

Below are screenshots showing the correct count of PST and OST files for John Espinoza

#### 2 PST Files

The screenshot shows the ScanPST interface with a list of files for custodian John Espinoza. The files are listed in a table with columns for Name, File Ext, and Item Path. Two PST files are highlighted with a red circle:

Name	File Ext	Item Path
4935 ntuser.pol	pol	UMC\John Espinoza\PDPPD2\ntuser.pol
4936 powerpnt.ppt	ppt	UMC\John Espinoza\PDPPD2\Templates\powerpnt.ppt
4937 Tobacco Free Class.ppt	ppt	UMC\John Espinoza\JohnEspinoza_HomeDrive\Tobacco Free Class.ppt
4938 Governance and Operations 12 13 11.ppt	ppt	UMC\John Espinoza\WHRDPT2\Local Settings\Temporary Internet Files\Conter
4939 powerpnt.ppt	ppt	UMC\John Espinoza\WHRDPT2\Templates\powerpnt.ppt
4940 MGRdashboard.pptx	pptx	UMC\John Espinoza\JohnEspinoza_HomeDrive\MGRdashboard.pptx
4941 Manager dashboard.pptx	pptx	UMC\John Espinoza\JohnEspinoza_HomeDrive\Manager dashboard.pptx
4942 UMC Comparative Info Ver 3.pptx	pptx	UMC\John Espinoza\JohnEspinoza_HomeDrive\UMC Comparative Info Ver 3.p
4943 deployment.properties	properties	UMC\John Espinoza\WHRDPT2\Application Data\Sun\Java\Deployment\depo
4944 JohnEspinoza_CurrentMailbox.pst	pst	UMC\John Espinoza\JohnEspinoza_CurrentMailbox.pst
4945 JohnEspinoza_mailbox.pst	pst	UMC\John Espinoza\OldEmail\JohnEspinoza_mailbox.pst
4946 PPThumbs.ptn	ptn	UMC\John Espinoza\JohnEspinoza_HomeDrive\My PaperPort Documents\Sam
4947 PPThumbs.ptn	ptn	UMC\John Espinoza\JohnEspinoza_HomeDrive\My PaperPort Documents\Sam
4948 olkmailread.qat	qat	UMC\John Espinoza\WHRDPT2\Local Settings\Application Data\Microsoft\Offi
4949 Excel.qat	qat	UMC\John Espinoza\WHRDPT2\Local Settings\Application Data\Microsoft\Offi
4950 olkmailitem.qat	qat	UMC\John Espinoza\WHRDPT2\Local Settings\Application Data\Microsoft\Offi
4951 PowerPoint.qat	qat	UMC\John Espinoza\WHRDPT2\Local Settings\Application Data\Microsoft\Offi

The bottom of the screenshot shows a detailed view of the selected file, 'JohnEspinoza\_CurrentMailbox.pst', with fields for Name, Ext, ical Size, sgroup, and Nature Analysis.

## 0 OST Files

Source: Evidence X

Viewing (Entry) Split Mode Condition Filter Tags Review Package Raw Search Selected Bookmark Get Info Find Related Entries Acquire Process Device Op

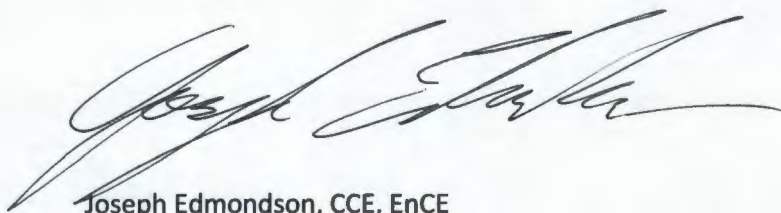
Table Timeline Gallery

Selected 0/84425

	Name	File Ext	Item Path
4819	708964525.ed	ed	UMC\John Espinoza\WHRDP12\Local Settings\Temp\708964525.ed
4820	2666680140.ed	ed	UMC\John Espinoza\WHRDP12\Local Settings\Temp\2666680140.ed
4821	2276395437.ed	ed	UMC\John Espinoza\WHRDP12\Local Settings\Temp\2276395437.ed
4822	532909718.ed	ed	UMC\John Espinoza\WHRDP12\Local Settings\Temp\532909718.ed
4823	2678580625.ed	ed	UMC\John Espinoza\WHRDP12\Local Settings\Temp\2678580625.ed
4824	-New SQL Server Connection.odc	odc	UMC\John Espinoza\JohnEspinoza_HomeDrive\My Data Sources\New SQL Server Connection.odc
4825	-Connect to New Data Source.odc	odc	UMC\John Espinoza\JohnEspinoza_HomeDrive\My Data Sources\Connect to New Data Source.odc
4826	usersync.enc.oid	oid	UMC\John Espinoza\POPP002\Application Data\CA\UnicenterDSM\Agent\CCP\usersync.enc.oid
4827	LoadedBodyStream-411828703-4.out	out	UMC\John Espinoza\WHRDP12\Local Settings\Temp\LoadedBodyStream-411828703-4.out
4828	LoadedBodyStream-3818373189-2.out	out	UMC\John Espinoza\WHRDP12\Local Settings\Temp\LoadedBodyStream-3818373189-2.out
4829	LoadedBodyStream-3818373189-3.out	out	UMC\John Espinoza\WHRDP12\Local Settings\Temp\LoadedBodyStream-3818373189-3.out
4830	LoadedBodyStream-411828703-2.out	out	UMC\John Espinoza\WHRDP12\Local Settings\Temp\LoadedBodyStream-411828703-2.out
4831	LoadedBodyStream-411828703-5.out	out	UMC\John Espinoza\WHRDP12\Local Settings\Temp\LoadedBodyStream-411828703-5.out
4832	LoadedBodyStream-411828703-1.out	out	UMC\John Espinoza\WHRDP12\Local Settings\Temp\LoadedBodyStream-411828703-1.out
4833	LoadedBodyStream-3818373189-1.out	out	UMC\John Espinoza\WHRDP12\Local Settings\Temp\LoadedBodyStream-3818373189-1.out
4834	LoadedBodyStream-3818373189-4.out	out	UMC\John Espinoza\WHRDP12\Local Settings\Temp\LoadedBodyStream-3818373189-4.out
4835	LoadedBodyStream-3818373189-5.out	out	UMC\John Espinoza\WHRDP12\Local Settings\Temp\LoadedBodyStream-3818373189-5.out

Fields Report View Hex Decode Doc Transcript Picture Console File Entries Permissions Hash Sets Attributes

Name	Value
mg	Application Data
File Ext	
Logical Size	0
Signature	Folder
Signature Analysis	



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